ONTARIO
LABOUR RELATIONS BOARD
REPORTS

November/December 2006

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REPORTS

A Bimonthly Series of Decisions from the
Ontario Labour Relations Board

Cited [2006] OLRB REP. NOVEMBER/DECEMBER

EDITORS: VOY STELMASZYNSKI
LEONARD MARVY

Selected decisions of particular reference value are also reported in *Canadian Labour Relations Boards Reports*, Butterworth & Co., Toronto.

2007-03682/

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11. S.L.R. Roofing and Sheet Metal; Re Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America; Re Robert Shewell; Re 6221220 Canada Canada Inc. o/a Jim's Roofing and Jim Leblanc 832

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2. D.M.S. Concrete & General Contracting Inc.; Re Operative Plasterers' Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Union Local 598 and Ontario Labour Relations Board 854

3. D.M.S. Concrete & General Contracting Inc.; Re Operative Plasterers' Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Union Local 598 and Ontario Labour Relations Board 855

SUBJECT INDEX

Bargaining Rights – Construction Industry – Termination – Voluntary Recognition – In this application by the Painters to terminate the Plasterers' bargaining rights under s. 66, Syntex was bound to the Painters' Provincial Collective Agreement (which covered, among others, drywall tapers), when it obtained a subcontract from a general contractor bound to a collective agreement with the Plasterers' requiring that plasterers' work only be subcontracted to companies in contractual relations with that union – After commencing work and employing drywall tapers, Syntex entered into a voluntary recognition agreement with the Plasterers – The Board held that when there are actual persons employed in the bargaining unit, the union must demonstrate that it was entitled to represent those actual employees – Although the Plasterers' could not show they were entitled to represent the employees in the bargaining unit on the applicable date, the Board noted it still had discretion under s. 66 to decide whether to terminate the bargaining rights – The Board, following *Penegal Trim*, found nothing to override the fundamental right of the employees of this particular employer to freely select their own union – The Board declared that the Plasterers' were not, at the time the voluntary recognition agreement was entered into, entitled to represent employees in the bargaining unit set out therein, and that the Plasterers' bargaining rights obtained by voluntary recognition with Syntex were terminated as of the date of the Board's oral decision – Application granted

R.P. SYNTEX WALLS SYSTEMS; RE IUPAT LOCAL 1891; RE OPERATIVE PLASTERERS' AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 124 823

Certification – Construction Industry – Employee – Membership Evidence – Practice and Procedure – Reconsideration – The employer requested reconsideration of the Board's decision to certify the union under s. 128.1 based on membership evidence filed by the union on behalf of more than 55% of the employees in the bargaining unit – The employer filed affidavit evidence, in which each affiant stated they had not signed a union membership card, from three of its five employees who were on the list of employees the Board considered when it made its certification determination – The allegations were specific, detailed and quite serious as they raised an issue of fraud or misrepresentation – The Board noted that at least one of the three affiants appeared to have signed a union membership card, however the Board did not disclose the degree of overlap between the membership evidence and the three affiants nor did it disclose the identity of the person or persons who appeared to have signed a card – The Board set the request for reconsideration down for hearing – Matter continues

LES BURCH & SON CONTRACTING; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL 804

Certification – Membership Evidence – Practice and Procedure – After a certification vote where sixteen of eighteen ballots were cast in favour of the union, the employer repeated in its post vote submissions the allegations in its response: namely that two union organizers had come to the employer's office and stolen a contact list of current employees, which had been used for the purpose of contacting the employees during the organizing drive – The employer asked the Board to dismiss the application pursuant to its discretionary powers contained in section 23(1) of the *Statutory Powers and Procedure Act* arguing that the union's actions amounted to an abuse of process since the application for certification was the 'poisoned fruit' of the illegally obtained list – The Board noted that section 8(9) of the Act precluded the Board from having

regard to allegations of this nature when disposing of an application for certification – The Board noted there was no allegation that the union's membership evidence was either false or misleading, nor were there any allegations that misrepresentations had been made to any employees – While the Board recognized that the union's alleged actions may have compromised the trust between the union and employer, employees' access to trade unions and collective bargaining are central purposes of the Act – The Board found there was no basis upon which to decline to grant the application for certification – Certification granted

CARE2000 HEALTH SERVICES; RE SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1 785

Certification – Practice and Procedure – The union sought an out-of-province summons and a certificate in accordance with the *Interprovincial Summons Act* – The Board was satisfied that pursuant to that Act and the Board's own powers under clause (c) of subsection 111(2) of the *Labour Relations Act, 1995* it has the authority to enforce the attendance of a witness in the same manner as a civil court – The Board was not persuaded, however, that its power extended to the issuance of the certificate pursuant to s. 5 of the ISA – Matter continues

3469051 CANADA INC.; RE CARPENTERS UNION, CENTRAL ONTARIO REGIONAL COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA 759

Certification – Timeliness – The Labourers applied to represent non-construction employees of Belanger – The Operating Engineers ("Local 793") asserted that their all-employee collective agreement encompassed the employees in question, so the application was untimely – The work related to highway maintenance contracts Belanger entered into with the City of Sudbury and the Ministry of Transportation – Belanger used a combination of Local 793 members and other individuals to perform the work, and Local 793 had never taken steps to enforce the collective agreement it claimed related to the highway maintenance work – The Board held that a collective agreement that requires an employer to pay its employees in a particular way when they are performing work outside the scope of the agreement does not extend the scope of the agreement to cover that work – Timeliness argument dismissed, matter continues

BELANGER CONSTRUCTION (1981) INC.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE IUOE, LOCAL 793; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 776

Conflict of Interest – Standing - Trusteeship – In the continuing battle between LIUNA and Local 183, the trustee asked the Board to declare that 183's Jurisdictional Committee had no standing to continue in this litigation, and that 183's lawyers were in a conflict of interest because of their access to and knowledge of confidential information relating to the trusteeship – Given that the Committee was extinguished when the trusteeship was imposed, and that the trustee purported to dissolve the Committee in any event, the Board declared that the Committee was no longer an entity capable of continuing to participate in these matters; the two remaining members of the Committee were added as individual parties to this litigation – On the conflict issue, the Board held that the law firm possessed no confidential knowledge outside of what it had learned from its clients to support the litigation – Since there has been no change in position [illegible] no individual lawyers moving from one side of the litigation to the other, the Board found no conflict and allowed the firm to continue to represent its clients

UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE LIUNA ET AL 848

Construction Industry – Bargaining Rights – Termination – Voluntary Recognition – In this application by the Painters to terminate the Plasterers' bargaining rights under s. 66, Syntex was bound to the Painters' Provincial Collective Agreement (which covered, among others, drywall tapers), when it obtained a subcontract from a general contractor bound to a collective agreement with the Plasterers' requiring that plasterers' work only be subcontracted to companies in contractual relations with that union – After commencing work and employing drywall tapers, Syntex entered into a voluntary recognition agreement with the Plasterers – The Board held that when there are actual persons employed in the bargaining unit, the union must demonstrate that it was entitled to represent those actual employees – Although the Plasterers' could not show they were entitled to represent the employees in the bargaining unit on the applicable date, the Board noted it still had discretion under s. 66 to decide whether to terminate the bargaining rights – The Board, following *Penegal Trim*, found nothing to override the fundamental right of the employees of this particular employer to freely select their own union – The Board declared that the Plasterers' were not, at the time the voluntary recognition agreement was entered into, entitled to represent employees in the bargaining unit set out therein, and that the Plasterers' bargaining rights obtained by voluntary recognition with Syntex were terminated as of the date of the Board's oral decision – Application granted

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LES BURCH & SON CONTRACTING; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL.. 804

Construction Industry – Duty to Bargain in Good Faith – Standing – Unfair Labour Practice – To secure itself a subcontractor to install cedar shingles, SLR signed a collective agreement with the Carpenters, after having been told by the subcontractor that the Residential Roofing Agreement was standard across the province and included a letter of understanding specifying wage rates for cedar shingling – After the subcontractor abandoned its contract with SLR, and SLR was forced to pay another entity higher rates to complete the work. SLR complained that both the subcontractor and the Carpenters had violated sections 17 and 70 of the Act, because the agreement SLR was given to sign was not in fact standard across the province – The Board held that an employer has no standing to bring a complaint under s. 70, so that element of the application was dismissed – With respect to the duty to bargain in good faith, the Board found that the Carpenters did not hold bargaining rights for the employees at the time that bargaining with SLR took place, so no such duty arose in the circumstances – Application dismissed

S.L.R. ROOFING AND SHEET METAL; RE CARPENTERS AND ALLIED WORKERS LOCAL 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; RE ROBERT SHEWELL; RE 6221220 CANADA INC. O/A JIM'S ROOFING AND JIM LEBLANC 832

Construction Industry Grievance – Contempt – Stated Case – The Board stated a case for contempt to Divisional Court when the responding party failed to attend a hearing or comply with production orders issued by the Board – When the responding party failed to appear at court, the Court found it to be in contempt of the Board and awarded a fine – The Court then made its own production order and adjourned the matter for one month to afford the responding party an opportunity to comply

D.M.S. CONCRETE & GENERAL CONTRACTING INC.; RE OPERATIVE PLASTERERS' CEMENT MASONS' AND RESTORATION STEEPLEJACKS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, UNION LOCAL 598 AND ONTARIO LABOUR RELATIONS BOARD 854

Construction Industry Grievance – Contempt – Stated Case – The Court found problems with the material before it respecting service on the respondents – The matter was adjourned to enable the applicant to either serve the respondents in accordance with the existing order or to obtain in Divisional Court motions court an order permitting service on some other basis – Matter adjourned

D.M.S. CONCRETE & GENERAL CONTRACTING INC.; RE OPERATIVE PLASTERERS' CEMENT MASONS' AND RESTORATION STEEPLEJACKS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, UNION LOCAL 598 AND ONTARIO LABOUR RELATIONS BOARD 855

Construction Industry Grievance – The Carpenters grieved the denial of access to the construction site of a massive new intake channel being built under the city of Niagara Falls on property owned by Ontario Power Generation – Although it had no members working at the site, the union argued that it needed access to gather evidence for the jurisdictional dispute it had filed – Strabag resisted access, citing health and safety reasons, confidentiality and security – The Board held that since access had been duly negotiated and formed part of the collective agreement between the Carpenters and EPSCA, the employer's categorical denial of access could not be substantiated – The employer was allowed to impose restrictions to access that paralleled those of union representatives with members on site – Grievances against OPG and EPSCA dismissed; grievance against Strabag allowed

STRABAG INC.; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18; RE ONTARIO POWER GENERATION INC. AND ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION 841

Contempt – Construction Industry Grievance - Stated Case - The Board stated a case for contempt to Divisional Court when the responding party failed to attend a hearing or comply with production orders issued by the Board – When the responding party failed to appear at court, the Court found it to be in contempt of the Board and awarded a fine – The Court then made its own production order and adjourned the matter for one month to afford the responding party an opportunity to comply

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Discharge – Discharge for Union Activity – Interim Relief – Remedies – Unfair Labour Practice – Two union organizers were terminated in the midst of an organizing campaign and the union asked the Board to reinstate them on an interim basis pending resolution of the complaint – The employer argued it had terminated the two employees for cause, based on allegations of absenteeism and various performance and attitude issues – Neither of the employees had ever been disciplined nor had they received complaints from the employer prior to their terminations – The employer was aware that the two individuals were union supporters – The employees were notified about their terminations through email messages – The Board reinstated the two individuals pending the resolution of the unfair labour practice complaint – In doing so, the Board acknowledged that the period of time between an application for certification and the ultimate disposition is a particularly difficult one for a union in terms of maintaining the confidence of its supporters – The Board found the union would suffer irreparable harm in terms of erosion of support if interim relief of reinstatement was not granted and that the balance of harm favoured granting the order – Interim reinstatement ordered

AXA ELECTRIC INC.; RE IBEW LOCAL 353 766

Discharge for Union Activity – Discharge – Interim Relief – Remedies – Unfair Labour Practice – Two union organizers were terminated in the midst of an organizing campaign and the union asked the Board to reinstate them on an interim basis pending resolution of the complaint – The employer argued it had terminated the two employees for cause, based on allegations of absenteeism and various performance and attitude issues – Neither of the employees had ever been disciplined nor had they received complaints from the employer prior to their terminations – The employer was aware that the two individuals were union supporters – The employees were notified about their terminations through email messages – The Board reinstated the two individuals pending the resolution of the unfair labour practice complaint – In doing so, the Board acknowledged that the period of time between an application for certification

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AXA ELECTRIC INC.; RE IBEW LOCAL 353 766

Discharge – Employment Standards – Rostrust Investments Inc. asked the Board to review four orders to pay in relation to the termination of four employees – The applicant owned a building complex and leased it to Public Works and Government Services Canada (PWGSC) – Pursuant to a contract, the applicant provided management, cleaning and maintenance services to the leased space where the employees worked – PWGSC terminated this contract and decided to provide these services directly – As a result, the applicant terminated the four employment contracts – Each respondent commenced employment with PWGSC – The applicant employer claimed five grounds to be relieved of its duty to pay termination pay: a) the respondents were given notice, b) the respondents resigned by accepting jobs with PWGSC, c) the applicant fell within the purview of Section 10 of the Act as they were a "building services provider", d) there was a sale of business, and e) termination pay would constitute a windfall as they respondents suffered no damages – The Board determined that the "sale of business" and "building service provider" provisions of the Act do not apply when the purchaser or new provider is subject to federal labour jurisdiction – Orders to Pay upheld – Applications dismissed

ROSTRUST INVESTMENTS INC./ INVESTISSEMENTS ROSTRUST INC.; RE TERRY DOXTATER, MARC PLOUFFE, RAYMOND CONLON, DARYL HARGROVE AND DIRECTOR OF EMPLOYMENT STANDARDS 813

Duty to Bargain in Good Faith – Construction Industry – Standing – Unfair Labour Practice – To secure itself a subcontractor to install cedar shingles, SLR signed a collective agreement with the Carpenters, after having been told by the subcontractor that the Residential Roofing Agreement was standard across the province and included a letter of understanding specifying wage rates for cedar shingling – After the subcontractor abandoned its contract with SLR, and SLR was forced to pay another entity higher rates to complete the work, SLR complained that both the subcontractor and the Carpenters had violated sections 17 and 70 of the Act, because the agreement SLR was given to sign was not in fact standard across the province – The Board held that an employer has no standing to bring a complaint under s. 70, so that element of the application was dismissed – With respect to the duty to bargain in good faith, the Board found that the Carpenters did not hold bargaining rights for the employees at the time that bargaining with SLR took place, so no such duty arose in the circumstances – Application dismissed

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Employee – Certification – Construction Industry – Membership Evidence – Practice and Procedure – Reconsideration – The employer requested reconsideration of the Board's decision to certify the union under s. 128.1 based on membership evidence filed by the union on behalf of more than 55% of the employees in the bargaining unit – The employer filed affidavit evidence, in which each affiant stated they had not signed a union membership card, from three of its five employees who were on the list of employees the Board considered when it made its certification determination – The allegations were specific, detailed and quite serious as they raised an issue of fraud or misrepresentation – The Board noted that at least one of the three affiants appeared to have signed a union membership card, however the Board did not disclose the degree of overlap between the membership evidence and the three affiants nor did it disclose the identity of the person or persons who appeared to have signed a card – The Board set the request for reconsideration down for hearing – Matter continues

LES BURCH & SON CONTRACTING; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL.. 804

Employment Standards – Grand & Toy challenged an order requiring it to amend its vacation pay policy that provided one annual lump sum payment of vacation pay to employees on a fixed date – The Act requires that employees be given two weeks vacation after the completion of an entitlement year and that a lump sum payment of accrued vacation pay be made prior to the employee's commencement of the vacation – The Board found such a fixed payment did not violate the Act and in some instances could even be construed as a greater right or benefit – Compliance Order rescinded

GRAND & TOY LIMITED; RE DIRECTOR OF EMPLOYMENT STANDARDS...... 806

Employment Standards – Discharge – Rostrust Investments Inc. asked the Board to review four orders to pay in relation to the termination of four employees – The applicant owned a building complex and leased it to Public Works and Government Services Canada (PWGSC) – Pursuant to a contract, the applicant provided management, cleaning and maintenance services to the leased space where the employees worked – PWGSC terminated this contract and decided to provide these services directly – As a result, the applicant terminated the four employment contracts – Each respondent commenced employment with PWGSC – The applicant employer claimed five grounds to be relieved of its duty to pay termination pay: a) the respondents were given notice, b) the respondents resigned by accepting jobs with PWGSC, c) the applicant fell within the purview of Section 10 of the Act as they were a "building services provider", d) there was a sale of business, and e) termination pay would constitute a windfall as they respondents suffered no damages – The Board determined that the "sale of business" and "building service provider" provisions of the Act do not apply when the purchaser or new provider is subject to federal labour jurisdiction – Orders to Pay upheld – Applications dismissed

ROSTRUST INVESTMENTS INC./ INVESTISSEMENTS ROSTRUST INC.; RE TERRY DOXTATER, MARC PLOUFFE, RAYMOND CONLON, DARYL HARGROVE AND DIRECTOR OF EMPLOYMENT STANDARDS.......................... 813

Health and Safety – Timeliness – The applicant sought to appeal an Inspector's Order pursuant to section 61 of the Occupational Health and Safety Act – On July 18, 2006 the Inspector prepared an Investigation Report and six days later the applicant wrote a letter to the Acting Program Manager of the Ministry of Labour raising concerns with the Report – The Acting Manager reviewed the Report and advised the applicant on August 4, 2006 that the employer had taken all reasonable precautions, and five days later provided the applicant with a written description of the appeals process pursuant to section 61 of the Act – The applicant claimed that the Acting Manager's letter dated August 4, 2006 constituted a decision and sought an appeal of it on August 29, 2006 –

The Board found that the letter did not convey a decision or communicate the results of an investigation that was conducted under the Act – The Board determined that the application was not filed within 30 days of the Inspector's decision dated July 18, 2006 – The Board confirmed that it does not have the authority to extend the statutory time limit for filing an appeal under section 61(1) – Appeal Dismissed

AVENUE II COMMUNITY PROGRAM SERVICES (THUNDER BAY); RE SHARON FONTAINE; RE DOUGLAS CETTINA, INSPECTOR 761

Interim Relief – Discharge – Discharge for Union Activity – Remedies – Unfair Labour Practice – Two union organizers were terminated in the midst of an organizing campaign and the union asked the Board to reinstate them on an interim basis pending resolution of the complaint – The employer argued it had terminated the two employees for cause, based on allegations of absenteeism and various performance and attitude issues – Neither of the employees had ever been disciplined nor had they received complaints from the employer prior to their terminations – The employer was aware that the two individuals were union supporters – The employees were notified about their terminations through email messages – The Board reinstated the two individuals pending the resolution of the unfair labour practice complaint – In doing so, the Board acknowledged that the period of time between an application for certification and the ultimate disposition is a particularly difficult one for a union in terms of maintaining the confidence of its supporters – The Board found the union would suffer irreparable harm in terms of erosion of support if interim relief of reinstatement was not granted and that the balance of harm favoured granting the order – Interim reinstatement ordered

AXA ELECTRIC INC.; RE IBEW LOCAL 353 766

Judicial Review – Related Employer – Sale of Business – On judicial review the court found that the standard was patent unreasonableness, that there was evidence to support the Board's finding that Courtney Wheeler was a key man, that the Board was entitled to draw the conclusions that it did from the evidence, and that it made no error with respect to the application of s. 126(5)2 – Application for judicial review dismissed

C.M.G. INNOVATIONS CO. LTD.; RE OLRB; RE ONTARIO PIPE TRADES COUNCIL, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES OF AMERICA AND CANADA, LOCAL 819, CORNWALL & DISTRICT CONTRACTING LTD.; RE CITY & DISTRICT STEEPLEJACKS LIMITED, AND CHRISTIAN LABOUR ASSOCIATION OF CANADA, LOCAL 52 853

Membership Evidence – Certification – Practice and Procedure – After a certification vote where sixteen of eighteen ballots were cast in favour of the union, the employer repeated in its post vote submissions the allegations in its response: namely that two union organizers had come to the employer's office and stolen a contact list of current employees, which had been used for the purpose of contacting the employees during the organizing drive – The employer asked the Board to dismiss the application pursuant to its discretionary powers contained in section 23(1) of the *Statutory Powers and Procedure Act* arguing that the union's actions amounted to an abuse of process since the application for certification was the 'poisoned fruit' of the illegally obtained list – The Board noted that section 8(9) of the Act precluded the Board from having regard to allegations of this nature when disposing of an application for certification – The Board noted there was no allegation that the union's membership evidence was either false or misleading, nor were there any allegations that misrepresentations had been made to any employees – While the Board recognized that the union's alleged actions may have compromised the trust between the union and employer, employees' access to trade unions and collective bargaining are central purposes of the Act – The Board found there was no basis upon which to decline to grant the application for certification – Certification granted

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CARE2000 HEALTH SERVICES; RE SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1 785

Practice and Procedure – Certification – The union sought an out-of-province summons and a certificate in accordance with the *Interprovincial Summons Act* – The Board was satisfied that pursuant to that Act and the Board's own powers under clause (c) of subsection 111(2) of the *Labour Relations Act, 1995* it has the authority to enforce the attendance of a witness in the same manner as a civil court – The Board was not persuaded, however, that its power extended to the issuance of the certificate pursuant to s. 5 of the ISA – Matter continues

3469051 CANADA INC.; RE CARPENTERS UNION, CENTRAL ONTARIO REGIONAL COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA 759

Prima Facie Case – Related Employer – Sale of Business – In order to build and operate a diamond mine, De Beers needed to construct an energy transmission line – Pursuant to the *Transmission Systems Code*, De Beers elected to build the line itself and upon completion would then be required to transfer ownership of the line to Hydro One – This process was established in a decision rendered by the Ontario Energy Board and was then implemented into the *Code* – Hydro One and De Beers brought two motions asking the Board to dismiss the Labourers' 69/1(4) applications without a hearing – The respondents sought to have the application dismissed as a collateral attack on the decision of the Ontario Energy Board and as disclosing no *prima facie* case – The Board determined that the application does not seek to attack or undermine the legal effect or order of the decision of the Ontario Energy Board, and is thus not a collateral attack – Although the Ontario Energy Board decision establishes that companies have the freedom to choose who they want to construct transmission lines, the issue of collective agreements and restrictions on contracting were not addressed in the decision – The Board confirmed that the test for a *prima facie* case is high and discretion to dismiss a complaint on this basis should only be exercised in the clearest of cases – The Board dismissed the respondents' *prima facie* motion as the conveyance of the transmission line upon completion raises a sufficient case such that it cannot be said that the application stands no reasonable chance of success – Matter continues

DE BEERS CANADA INC.; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; HYDRO ONE INC. (INCLUDING: HYDRO ONE NETWORKS INC., HYDRO ONE NETWORKS SERVICES INC., HYDRO ONE REMOTE COMMUNITIES INC.) 792

Reconsideration – Certification – Construction Industry – Employee – Membership Evidence – Practice and Procedure – The employer requested reconsideration of the Board's decision to certify the union under s. 128.1 based on membership evidence filed by the union on behalf of more than 55% of the employees in the bargaining unit – The employer filed affidavit evidence, in which each affiant stated they had not signed a union membership card, from three of its five employees who were on the list of employees the Board considered when it made its certification determination – The allegations were specific, detailed and quite serious as they raised an issue of fraud or misrepresentation – The Board noted that at least one of the three affiants appeared to have signed a union membership card, however the Board did not disclose the degree of overlap between the membership evidence and the three affiants nor did it disclose the identity of the person or persons who appeared to have signed a card – The Board set the request for reconsideration down for hearing – Matter continues

LES BURCH & SON CONTRACTING; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL.......... 804

Related Employer – Judicial Review – Sale of Business – On judicial review the court found that the standard was patent unreasonableness, that there was evidence to support the Board's finding that Courtney Wheeler was a key man, that the Board was entitled to draw the conclusions that it did from the evidence, and that it made no error with respect to the application of s. 126(5)2 – Application for judicial review dismissed

C.M.G. INNOVATIONS CO. LTD.; RE OLRB; RE ONTARIO PIPE TRADES COUNCIL, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES OF AMERICA AND CANADA, LOCAL 819, CORNWALL & DISTRICT CONTRACTING LTD.; RE CITY & DISTRICT STEEPLEJACKS LIMITED, AND CHRISTIAN LABOUR ASSOCIATION OF CANADA, LOCAL 52.......... 853

Related Employer – *Prima Facie* Case – Sale of Business – In order to build and operate a diamond mine, De Beers needed to construct an energy transmission line – Pursuant to the *Transmission Systems Code*, De Beers elected to build the line itself and upon completion would then be required to transfer ownership of the line to Hydro One – This process was established in a decision rendered by the Ontario Energy Board and was then implemented into the *Code* – Hydro One and De Beers brought two motions asking the Board to dismiss the Labourers' 69/1(4) applications without a hearing – The respondents sought to have the application dismissed as a collateral attack on the decision of the Ontario Energy Board and as disclosing no *prima facie* case – The Board determined that the application does not seek to attack or undermine the legal effect or order of the decision of the Ontario Energy Board, and is thus not a collateral attack – Although the Ontario Energy Board decision establishes that companies have the freedom to choose who they want to construct transmission lines, the issue of collective agreements and restrictions on contracting were not addressed in the decision – The Board confirmed that the test for a *prima facie* case is high and discretion to dismiss a complaint on this basis should only be exercised in the clearest of cases – The Board dismissed the respondents' *prima facie* motion as the conveyance of the transmission line upon completion raises a sufficient case such that it cannot be said that the application stands no reasonable chance of success – Matter continues

DE BEERS CANADA INC.; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA AND LABOURERS' INTERNATIONAL UNION OF NORTH

AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; HYDRO ONE INC. (INCLUDING: HYDRO ONE NETWORKS INC., HYDRO ONE NETWORKS SERVICES INC., HYDRO ONE REMOTE COMMUNITIES INC.)............................ 792

Remedies – Discharge – Discharge for Union Activity – Interim Relief – Unfair Labour Practice – Two union organizers were terminated in the midst of an organizing campaign and the union asked the Board to reinstate them on an interim basis pending resolution of the complaint – The employer argued it had terminated the two employees for cause, based on allegations of absenteeism and various performance and attitude issues – Neither of the employees had ever been disciplined nor had they received complaints from the employer prior to their terminations – The employer was aware that the two individuals were union supporters – The employees were notified about their terminations through email messages – The Board reinstated the two individuals pending the resolution of the unfair labour practice complaint – In doing so, the Board acknowledged that the period of time between an application for certification and the ultimate disposition is a particularly difficult one for a union in terms of maintaining the confidence of its supporters – The Board found the union would suffer irreparable harm in terms of erosion of support if interim relief of reinstatement was not granted and that the balance of harm favoured granting the order – Interim reinstatement ordered

AXA ELECTRIC INC.; RE IBEW LOCAL 353 766

Sale of Business – Judicial Review – Related Employer – On judicial review the court found that the standard was patent unreasonableness, that there was evidence to support the Board's finding that Courtney Wheeler was a key man, that the Board was entitled to draw the conclusions that it did from the evidence, and that it made no error with respect to the application of s. 126(5)2 – Application for judicial review dismissed

C.M.G. INNOVATIONS CO. LTD.; RE OLRB; RE ONTARIO PIPE TRADES COUNCIL, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES OF AMERICA AND CANADA, LOCAL 819, CORNWALL & DISTRICT CONTRACTING LTD.; RE CITY & DISTRICT STEEPLEJACKS LIMITED, AND CHRISTIAN LABOUR ASSOCIATION OF CANADA, LOCAL 52 853

Sale of Business – *Prima Facie* Case – Related Employer – In order to build and operate a diamond mine, De Beers needed to construct an energy transmission line – Pursuant to the *Transmission Systems Code*, De Beers elected to build the line itself and upon completion would then be required to transfer ownership of the line to Hydro One – This process was established in a decision rendered by the Ontario Energy Board and was then implemented into the *Code* – Hydro One and De Beers brought two motions asking the Board to dismiss the Labourers' 69/1(4) applications without a hearing – The respondents sought to have the application dismissed as a collateral attack on the decision of the Ontario Energy Board and as disclosing no *prima facie* case – The Board determined that the application does not seek to attack or undermine the legal effect or order of the decision of the Ontario Energy Board, and is thus not a collateral attack – Although the Ontario Energy Board decision establishes that companies have the freedom to choose who they want to construct transmission lines, the issue of collective agreements and restrictions on contracting were not addressed in the decision – The Board confirmed that the test for a *prima facie* case is high and discretion to dismiss a complaint on this basis should only be exercised in the clearest of cases – The Board dismissed the respondents' *prima facie* motion as the conveyance of the transmission line upon completion raises a sufficient case such that it cannot be said that the application stands no reasonable chance of success – Matter continues

DE BEERS CANADA INC.; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; HYDRO ONE INC. (INCLUDING: HYDRO ONE NETWORKS INC., HYDRO ONE NETWORKS SERVICES INC., HYDRO ONE REMOTE COMMUNITIES INC.)............................ 792

Standing – Conflict of Interest – Trusteeship – In the continuing battle between LIUNA and Local 183, the trustee asked the Board to declare that 183's Jurisdictional Committee had no standing to continue in this litigation, and that 183's lawyers were in a conflict of interest because of their access to and knowledge of confidential information relating to the trusteeship – Given that the Committee was extinguished when the trusteeship was imposed, and that the trustee purported to dissolve the Committee in any event, the Board declared that the Committee was no longer an entity capable of continuing to participate in these matters; the two remaining members of the Committee were added as individual parties to this litigation – On the conflict issue, the Board held that the law firm possessed no confidential knowledge outside of what it had learned from its clients to support the litigation – Since there has been no change in positions, and no individual lawyers moving from one side of the litigation to the other, the Board found no conflict and allowed the firm to continue to represent its clients

UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE LIUNA ET AL 848

Standing – Construction Industry – Duty to Bargain in Good Faith – Unfair Labour Practice – To secure itself a subcontractor to install cedar shingles, SLR signed a collective agreement with the Carpenters, after having been told by the subcontractor that the Residential Roofing Agreement was standard across the province and included a letter of understanding specifying wage rates for cedar shingling – After the subcontractor abandoned its contract with SLR, and SLR was forced to pay another entity higher rates to complete the work, SLR complained that both the subcontractor and the Carpenters had violated sections 17 and 70 of the Act, because the agreement SLR was given to sign was not in fact standard across the province – The Board held that an employer has no standing to bring a complaint under s. 70, so that element of the application was dismissed – With respect to the duty to bargain in good faith, the Board found that the Carpenters did not hold bargaining rights for the employees at the time that bargaining with SLR took place, so no such duty arose in the circumstances – Application dismissed

S.L.R. ROOFING AND SHEET METAL; RE CARPENTERS AND ALLIED WORKERS LOCAL 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; RE ROBERT SHEWELL; RE 6221220 CANADA INC. O/A JIM'S ROOFING AND JIM LEBLANC 832

Stated Case – Construction Industry Grievance – Contempt – The Court found problems with the material before it respecting service on the respondents – The matter was adjourned to enable the applicant to either serve the respondents in accordance with the existing order or to obtain in Divisional Court motions court an order permitting service on some other basis – Matter adjourned

D.M.S. CONCRETE & GENERAL CONTRACTING INC.; RE OPERATIVE PLASTERERS' CEMENT MASONS' AND RESTORATION STEEPLEJACKS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, UNION LOCAL 598 AND ONTARIO LABOUR RELATIONS BOARD 854

Stated Case - Construction Industry Grievance - Contempt – The Board stated a case for contempt to Divisional Court when the responding party failed to attend a hearing or comply with production orders issued by the Board – When the responding party failed to appear at court, the Court found it to be in contempt of the Board and awarded a fine – The Court then made its own production order and adjourned the matter for one month to afford the responding party an opportunity to comply

D.M.S. CONCRETE & GENERAL CONTRACTING INC.; RE OPERATIVE PLASTERERS' CEMENT MASONS' AND RESTORATION STEEPLEJACKS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, UNION LOCAL 598 AND ONTARIO LABOUR RELATIONS BOARD 855

Termination – Bargaining Rights – Construction Industry – Voluntary Recognition – In this application by the Painters to terminate the Plasterers' bargaining rights under s. 66, Syntex was bound to the Painters' Provincial Collective Agreement (which covered, among others, drywall tapers), when it obtained a subcontract from a general contractor bound to a collective agreement with the Plasterers' requiring that plasterers' work only be subcontracted to companies in contractual relations with that union – After commencing work and employing drywall tapers, Syntex entered into a voluntary recognition agreement with the Plasterers – The Board held that when there are actual persons employed in the bargaining unit, the union must demonstrate that it was entitled to represent those actual employees – Although the Plasterers' could not show they were entitled to represent the employees in the bargaining unit on the applicable date, the Board noted it still had discretion under s. 66 to decide whether to terminate the bargaining rights – The Board, following *Penegal Trim*, found nothing to override the fundamental right of the employees of this particular employer to freely select their own union – The Board declared that the Plasterers' were not, at the time the voluntary recognition agreement was entered into, entitled to represent employees in the bargaining unit set out therein, and that the Plasterers' bargaining rights obtained by voluntary recognition with Syntex were terminated as of the date of the Board's oral decision – Application granted

R.P. SYNTEX WALLS SYSTEMS; RE IUPAT LOCAL 1891; RE OPERATIVE PLASTERERS' AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 124 823

Timeliness – Certification – The Labourers applied to represent non-construction employees of Belanger – The Operating Engineers ("Local 793") asserted that their all-employee collective agreement encompassed the employees in question, so the application was untimely – The work related to highway maintenance contracts Belanger entered into with the City of Sudbury and the Ministry of Transportation – Belanger used a combination of Local 793 members and other individuals to perform the work, and Local 793 had never taken steps to enforce the collective agreement it claimed related to the highway maintenance work – The Board held that a collective agreement that requires an employer to pay its employees in a particular way when they are performing work outside the scope of the agreement does not extend the scope of the agreement to cover that work – Timeliness argument dismissed, matter continues

BELANGER CONSTRUCTION (1981) INC.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE IUOE, LOCAL 793; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 776

Timeliness – Health and Safety – The applicant sought to appeal an Inspector's Order pursuant to section 61 of the Occupational Health and Safety Act – On July 18, 2006 the Inspector prepared an Investigation Report and six days later the applicant wrote a letter to the Acting Program Manager of the Ministry of Labour raising concerns with the Report – The Acting Manager reviewed the Report and advised the applicant on August 4, 2006 that the employer had taken all reasonable precautions, and five days later provided the applicant with a written description of the appeals process pursuant to section 61 of the Act – The applicant claimed that the Acting Manager's letter dated August 4, 2006 constituted a decision and sought an appeal of it on August 29, 2006 – The Board found that the letter did not convey a decision or communicate the results of an investigation that was conducted under the Act – The Board determined that the application was not filed within 30 days of the Inspector's decision dated July 18, 2006 – The Board confirmed that it does not have the authority to extend the statutory time limit for filing an appeal under section 61(1) – Appeal Dismissed

AVENUE II COMMUNITY PROGRAM SERVICES (THUNDER BAY); RE SHARON FONTAINE; RE DOUGLAS CETTINA, INSPECTOR 761

Trusteeship – Conflict of Interest – Standing – In the continuing battle between LIUNA and Local 183, the trustee asked the Board to declare that 183's Jurisdictional Committee had no standing to continue in this litigation, and that 183's lawyers were in a conflict of interest because of their access to and knowledge of confidential information relating to the trusteeship – Given that the Committee was extinguished when the trusteeship was imposed, and that the trustee purported to dissolve the Committee in any event, the Board declared that the Committee was no longer an entity capable of continuing to participate in these matters; the two remaining members of the Committee were added as individual parties to this litigation – On the conflict issue, the Board held that the law firm possessed no confidential knowledge outside of what it had learned from its clients to support the litigation – Since there has been no change in positions, and no individual lawyers moving from one side of the litigation to the other, the Board found no conflict and allowed the firm to continue to represent its clients

UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE LIUNA ET AL 848

Unfair Labour Practice – Construction Industry – Duty to Bargain in Good Faith – Standing – To secure itself a subcontractor to install cedar shingles, SLR signed a collective agreement with the Carpenters, after having been told by the subcontractor that the Residential Roofing Agreement was standard across the province and included a letter of understanding specifying wage rates for cedar shingling – After the subcontractor abandoned its contract with SLR, and SLR was forced to pay another entity higher rates to complete the work, SLR complained that both the subcontractor and the Carpenters had violated sections 17 and 70 of the Act, because the agreement SLR was given to sign was not in fact standard across the province – The Board held that an employer has no standing to bring a complaint under s. 70, so that element of the application was dismissed – With respect to the duty to bargain in good faith, the Board found that the Carpenters did not hold bargaining rights for the employees at the time that bargaining with SLR took place, so no such duty arose in the circumstances – Application dismissed

S.L.R. ROOFING AND SHEET METAL; RE CARPENTERS AND ALLIED WORKERS LOCAL 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; RE ROBERT SHEWELL; RE 6221220 CANADA INC. O/A JIM'S ROOFING AND JIM LEBLANC 832

Unfair Labour Practice – Discharge – Discharge for Union Activity – Interim Relief – Remedies – Two union organizers were terminated in the midst of an organizing campaign and the union asked the Board to reinstate them on an interim basis pending resolution of the complaint – The employer argued it had terminated the two employees for cause, based on allegations of absenteeism and various performance and attitude issues – Neither of the employees had ever been disciplined nor had they received complaints from the employer prior to their terminations – The employer was aware that the two individuals were union supporters – The employees were notified about their terminations through email messages – The Board reinstated the two individuals pending the resolution of the unfair labour practice complaint – In doing so, the Board acknowledged that the period of time between an application for certification and the ultimate disposition is a particularly difficult one for a union in terms of maintaining the confidence of its supporters – The Board found the union would suffer irreparable harm in terms of erosion of support if interim relief of reinstatement was not granted and that the balance of harm favoured granting the order – Interim reinstatement ordered

AXA ELECTRIC INC.; RE IBEW LOCAL 353 766

Voluntary Recognition – Bargaining Rights – Construction Industry – Termination – In this application by the Painters to terminate the Plasterers' bargaining rights under s. 66, Syntex was bound to the Painters' Provincial Collective Agreement (which covered, among others, drywall tapers), when it obtained a subcontract from a general contractor bound to a collective agreement with the Plasterers' requiring that plasterers' work only be subcontracted to companies in contractual relations with that union – After commencing work and employing drywall tapers, Syntex entered into a voluntary recognition agreement with the Plasterers – The Board held that when there are actual persons employed in the bargaining unit, the union must demonstrate that it was entitled to represent those actual employees – Although the Plasterers' could not show they were entitled to represent the employees in the bargaining unit on the applicable date, the Board noted it still had discretion under s. 66 to decide whether to terminate the bargaining rights – The Board, following *Penegal Trim*, found nothing to override the fundamental right of the employees of this particular employer to freely select their own union – The Board declared that the Plasterers' were not, at the time the voluntary recognition agreement was entered into, entitled to represent employees in the bargaining unit set out therein, and that the Plasterers' bargaining rights obtained by voluntary recognition with Syntex were terminated as of the date of the Board's oral decision – Application granted

R.P. SYNTEX WALLS SYSTEMS; RE IUPAT LOCAL 1891; RE OPERATIVE PLASTERERS' AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 124 823

1654-06-R Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America, Applicant v. **3469051 Canada Inc.**, Responding Party.

Certification – Practice and Procedure – The union sought an out-of-province summons and a certificate in accordance with the *Interprovincial Summons Act* – The Board was satisfied that pursuant to that Act and the Board's own powers under clause (c) of subsection 111(2) of the *Labour Relations Act, 1995* it has the authority to enforce the attendance of a witness in the same manner as a civil court – The Board was not persuaded, however, that its power extended to the issuance of the certificate pursuant to s. 5 of the ISA – Matter continues

BEFORE: *Caroline Rowan*, Vice-Chair.

APPEARANCES: *J. David Watson, Stephen Chedas* and *Chris Smith* for the applicant; *Chris Fiore* for the responding party.

DECISION OF THE BOARD; November 15, 2006

1. This is an application for certification filed under the *Labour Relations Act, 1995* (the "LRA").

2. At the hearing in this matter scheduled on November 3, 2006, counsel for the applicant requested that the Board provide the applicant with a summons for use outside of Ontario in a form similar to that set out in Form 53C of the *Rules of Civil Procedure*. Counsel also requested that the Board provide the applicant with a certificate containing the information in Schedule 2 to the *Interprovincial Summons Act*, R.S.O. 1990, Chapter I.12 ("ISA") and contemplated under section 5 of the ISA. Counsel noted that this was required because both individuals whose status is in dispute in this certification proceeding reside in Quebec.

3. Counsel submitted that the Board has the power to provide such a summons and to issue a certificate contemplated under section 5 of the ISA given the power conferred on it under subsection 111(2)(c) of the LRA to enforce the attendance of witnesses "in the same manner as a court of record in civil cases". The responding party did not take a position on this issue and indicated that it was leaving the matter in the Board's hands to determine.

4. Subsection 111(2)(c) of the LRA reads as follows:

> 111.(1) The Board shall exercise the powers and perform the duties that are conferred or imposed on it by or under this Act.
>
> (2) Without limiting the generality of subsection (1), the Board has power,
>
> . . .
>
> (c) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce the documents and things that the Board considers requisite to the full investigation and consideration of matters within its jurisdiction in the same manner as a court of record in civil cases.

5. The relevant provisions of the ISA provide as follows:

> **Definitions**
>
> 1. In this Act,
>
> "court" means any court in a province; ("tribunal")
>
> "province" means a province of Canada and includes each of the territories of Canada; ("province")
>
> "summons" means a summons or other document issued by a court, an agency, board or commission, or another person authorized to issue summonses, requiring a person within a province other than the one where the document is issued to attend as a witness at a trial, hearing or examination, to produce documents or other things or to testify before the issuing body or person. ("assignation") R.S.O. 1990, c. I. 12, s.1; 1993, c. 27, Sche.; 1999, c. 12, Sched. B, s. 11; 2000, c. 26, Sched. A, s.10(1).
>
> ...
>
> **Proceedings in Ontario**
>
> 5. (1) Where a party to a proceeding in any court in Ontario causes a summons to be issued for service in another province, the party may attend upon a judge of the Superior Court of Justice, who shall hear and examine the party or the party's counsel if any, and, upon being satisfied that the attendance in Ontario of the person required in Ontario as a witness,
>
> (a) is necessary for the due adjudication of the proceeding in which the summons or other document has been issued; and
> (b) in relation to the nature and importance of the proceedings, is reasonable and essential to the due administration of justice in Ontario,
>
> shall sign a certificate which may be in the form set out in Schedule 2 and shall cause the certificate to be impressed with the seal of the court. R.S.O. 1990, c. I.12, s. 5(1); 2000, c.26, Sched. A, s.10(4).
>
> **Certificate**
>
> (2) The certificate shall be either attached to or endorsed on the summons. R.S.O. 1990, c. I. 12, s.5(2).

6. The Board is satisfied that it has the power under subsection 111(2)(c) of the LRA to issue a summons for service in a province outside of Ontario in the same manner as a court would. Under subsection 111(2)(c) of the LRA, the Board has the authority to enforce the attendance of a witness in the same manner as a court of record in civil cases. In Ontario, a court of record in civil cases has the authority to issue a summons for service in a province outside of Ontario. The Board will therefore make the requested summons available to the applicant. The applicant may contact the solicitors' office of the Board to obtain a signed form of summons for service in a province outside of Ontario. The applicant is directed to attach a copy of this decision to any such summonses served in this proceeding.

7. With respect to the applicant's second request, the Board is not persuaded that it has the authority under the LRA or otherwise to sign a certificate contemplated under section 5 of the ISA. While subsection 111(2)(c) provides that the Board has the power "to enforce the attendance of witnesses ... in the same manner as a court of record in civil cases," that provision does not empower the Board to take steps that only a judge of the Superior Court of Justice can take under the terms of the ISA. Section 5 makes clear that a party must attend before a judge of the Superior Court of Justice to obtain a certificate and contemplates that such certificates be signed by "a judge of the Superior Court of Justice". The Board does not have the jurisdiction to sign such certificates and it therefore declines the applicant's request that it do so.

8. The Board can however offer its own view of the matter to the extent that may be of any assistance. The Board has heard from the applicant's counsel as to the reasons why the attendance of Mr. Sylvain Boudreau and Mr. Sylvain Rondeau are required at the hearing in this matter. The Board is satisfied that the attendance in Ontario of these individuals as a witness is necessary for the due adjudication of the present certification proceeding and that given the nature of the proceeding and its importance the attendance in Ontario of these witnesses is reasonable and essential to a determination of the case.

9. This application is referred to the Registrar to set continuation dates in consultation with the parties.

1684-06-HS Sharon Fontaine, Applicant v. **Avenue II Community Program Services (Thunder Bay) Incorporated** and Douglas Cettina, Inspector, Responding Parties.

Health and Safety – Timeliness – The applicant sought to appeal an Inspector's Order pursuant to section 61 of the Occupational Health and Safety Act – On July 18, 2006 the Inspector prepared an Investigation Report and six days later the applicant wrote a letter to the Acting Program Manager of the Ministry of Labour raising concerns with the Report – The Acting Manager reviewed the Report and advised the applicant on August 4, 2006 that the employer had taken all reasonable precautions, and five days later provided the applicant with a written description of the appeals process pursuant to section 61 of the Act – The applicant claimed that the Acting Manager's letter dated August 4, 2006 constituted a decision and sought an appeal of it on August 29, 2006 – The Board found that the letter did not convey a decision or communicate the results of an investigation that was conducted under the Act – The Board determined that the application was not filed within 30 days of the Inspector's decision dated July 18, 2006 – The Board confirmed that it does not have the authority to extend the statutory time limit for filing an appeal under section 61(1) – Appeal Dismissed

BEFORE: *Susan Serena*, Vice-Chair

DECISION OF THE BOARD; December 4, 2006

1. This is an appeal filed under section 61 of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O-1 as amended (the "Act"). The appeal was filed on August 29, 2006.

2. The responding party, Avenue II Community Program Services (Thunder Bay) Incorporated (Avenue II) asserts that the appeal should be dismissed, without a hearing, because the application was not filed within the 30-day time period prescribed in section 61(1) of the Act. This decision deals solely with the issue of whether this application is timely.

3. The relevant provisions of section 61 read as follows:

> 61(1) Any employer, constructor, licensee, owner, worker or trade union which considers himself, herself or itself aggrieved by any order made by an inspector under this Act or the regulations may appeal to the Board within 30 days after the making of the order.
>
> ...
>
> (5) In this section, an order of an inspector under this Act or regulations includes any order or decision made or given or the imposition of any terms or conditions therein by an inspector under the authority of this Act or the regulations or the refusal to make an order or decision by an inspector.

4. In its September 20, 2006 decision the Board identified that there was a factual dispute between the parties regarding the timeliness of this application. However, because the documents submitted by the parties appeared to be incomplete the Board directed the Ministry of Labour ("MOL") to:

> ...provide the Board (copied to the other parties) with its written response to the assertion that the appeal is untimely and file any documents that would assist the Board in resolving this issue.

5. The MOL outlined the chronology of events and provided the Board with various documents. The MOL also made the following submission regarding the issue of whether the application was timely:

> 1. If the applicant is seeking an appeal of the decision of Inspector Doug Cettina that there was no work refusal ...the appeal is untimely...
>
> 2. The MOL submits that the applicant cannot appeal the letter dated August 9, 2006, as it does not constitute a decision or refusal to issue an order within the meaning of subsection 61(5) of the OHSA.
>
> 3. The MOL submits that the appeal may be considered timely if the Board determines that the applicant has appealed the letter dated August 4, 2006 from acting manager Dale Bartlett which may be considered a decision or refusal to issue an order.

6. Although not requested to do so, both the applicant and the responding party filed a reply to the submission by the MOL. After reviewing all of these submissions the Board directed the parties (including the MOL if it wished to do so) to address the following two issues:

> a) Does this appeal relate to a decision made by Acting Manager Dale Bartlett on or about August 4, 2006?
>
> b) Does the letter from Acting Manager Bartlett constitute a "decision" within the meaning of subsection 61(1) of the Act?

7. The chronology of events and background facts are as follows:

a) this application relates to an alleged work refusal by the applicant on or about April 4, 2006 (the "complaint");

b) on July 7, 2006, Inspector D. Cettina conducted a field visit to investigate the complaint and issued Premise/Project Report FV: 5584660 which indicated "no orders issued";

c) on July 11, 2006, Inspector D. Cettina conducted a second field visit to investigate the same complaint and issued Premise/Project Report FV: 5584664 which indicated "no orders issued";

d) on July 18, 2006, Inspector D. Cettina conducted a third field visit to investigate the same complaint and issued Premise/Project Report FV: 5584669 which indicated "no actions required";

e) on or about July 18, 2006 Inspector D. Cettina prepared an Investigation Report (No. 5636023), which concluded that the events of April 4, 2006 did not constitute a work refusal under section 43 of the Act and that "no further action by the Ministry of Labour is required".

f) In a letter to Dale Bartlett (Acting Program Manager, Ministry of Labour) dated July 24, 2006 the applicant's advisor raised concerns about the Investigation Report, in particular the conclusion by Inspector Cettina that there had not been a work refusal on April 4, 2006. In this letter the advisor also provided the Ministry with a copy of a "without prejudice" letter he had received from Avenue II in May which outlined the employer's efforts to "accommodate" the applicant's medical restrictions.

g) By letter dated August 4, 2006 Dale Bartlett advised the applicant's advisor that after reviewing the Investigation Report (No. 5636023) and the July 24, 2006 letter that he was satisfied that the employer had taken "every precaution reasonable in the circumstances" as required by section 25.2(h) of the Act;

h) On August 8, 2006 the applicant's advisor wrote to the Ministry of Labour and indicated that the applicant wished to appeal the decision contained in the letter of August 4, 2006.

i) On August 9, 2006 Dale Bartlett replied to the applicant's advisor as follows:

> **Re: Sharon Fontaine Ministry of Labour Case #5636023**
>
> Section 61(1) of the Occupational Health and Safety Act R.S.O. 1990 states any worker which considers himself, herself … aggrieved by any order under this Act or the regulations may appeal to the Board with 30 days after the making of the order…Sharon Fontaine can appeal the findings of the investigation conducted by Inspector Cettina using the case number above.

j) On August 29, 2006 the present appeal was filed with the Board.

8. The applicant asserts that Dale Bartlett's letter of August 4, 2006 constitutes a "decision" under the Act because this letter indicates that he reviewed the Investigation Report and the advisor's July 24th letter (which supplied information not previously submitted to the Ministry) before concluding that the employer had taken every reasonable precaution under the Act.

9. Avenue II maintains that the subject matter of this appeal is the decision made by Inspector Cettina on July 18, 2006 refusing to issue an order under the Act. In support of its assertion that this appeal does not relate to a "purported" decision made by Dale Bartlett on August 4, 2006, Avenue II relies on the following:

a) The application (Form A-65) indicates that the decision being appealed is the decision of "Douglas Cettina" and refers to "Order/Field Visit Report Number 5636023". The investigation report prepared by Inspector Cettina was also filed with the application.

b) There is no reference in the application to the decision having been made by Dale Bartlett and his letter of August 4, 2006 was not appended to the application;

c) The applicant's October 20, 2006 submission to the Board refers to the decision of Inspector Cettina and does not in any way assert that appeal relates to a decision by Dale Bartlett.

10. Finally, Avenue II disputes that on August 4, 2006 Dale Bartlett made a "decision" that can be appealed under section 61 of the Act. First, Avenue II submits that Bartlett was simply reviewing information and not conducting an investigation that resulted in a decision (or finding) which could be appealed under section 61 of the Act. Further, Avenue II asserts that it was not copied on the August 4, 2006 letter and only received a copy of this correspondence when the Ministry responded on October 23rd, 2006 to the Board's direction to provide further information.

Disposition

11. Having reviewed all of the material filed by the parties, including the October 23rd, 2006 submission from the Ministry of Labour, the Board finds, for the reasons set out below, that this application is untimely.

12. The application (Form A-65) requires the applicant to provide information with respect to the identity of the inspector and the order (Field Visit/Report) that is the subject matter of the appeal. Although, the applicant indicated that the date of the order (Field Visit/Report) was August 9, 2006 and a copy of Dale Bartlett's August 9th letter was filed with the application nothing else in the application is consistent with the intention of the applicant to appeal a decision made on or about that date.

13. Further, the August 9, 2006 date referred to in the application does not correspond to the date of any order, field visit or report otherwise referred to in the application or in the

applicant's initial submission to the Board. More importantly, Dale Bartlett's letter of August 9, 2006 does not convey a decision or communicate the results of an investigation that was conducted under the Act. Instead, this letter simply outlines the requirements of section 61(1) of the Act and provides information on how the applicant can appeal "the findings of the investigation completed by Inspector Cettina". The Board also notes that as of the date of this letter the applicant still had time to file an appeal with regard to Inspector Cettina's findings.

14. Rather, a review of the application (including the accompanying documents) indicates that this appeal relates to Field Visit/Report 5636023 and the decision of Inspector Cettina. For example, there are no facts asserted in the application that support the conclusion that the applicant is appealing a decision made by Dale Bartlett (or any individual other than Douglas Cettina). Further, a copy of Investigation Report No. 5636023 was filed with the application. In these circumstances, the only logical conclusion that can be drawn is that the applicant is appealing Inspector Cettina's decision (in Investigation Report No. 5636023) that a work refusal had not occurred on April 6, 2006 and "no further action by the Ministry of Labour is required".

15. Furthermore, the Board is satisfied that when Dale Bartlett wrote to the applicant's advisor on August 4th he was simply responding, as a supervisor, to the allegations in the advisor's July 24th letter that Inspector Cettina had failed to conduct a proper investigation. When a superior reviews an Investigation Report in response to complaints about the actions of an inspector the superior is not conducting an investigation or making a decision under section 61 of the Act. Finally, if Bartlett thought he was making a decision under the Act then Avenue II ought to have been copied on this correspondence.

16. Accordingly, the Board finds that this appeal relates to Inspector Cettina's determination in Investigation Report No. 5636023 that a work refusal had not occurred on April 4, 2006 and that "no further action by the Ministry of Labour is required".

17. The Ministry of Labour asserts that the decision by Inspector Cettina not to issue an order was made on July 18, 2006 and communicated to the applicant on July 19, 2006. It is not clear from the two submissions filed on the applicant's behalf whether she accepts that chronology of events. However, in the July 24, 2006 letter to Dale Bartlett, the applicant's advisor indicates that he had received a copy of Investigation Report No. 5636023 from the applicant. Accordingly, the applicant cannot assert that Inspector Cettina's decision was made at a point in time that is after July 24, 2006 However, even if the applicant can establish that the decision under appeal was not made until July 24, 2006 this appeal is still untimely.

18. The Board has previously determined that it does not have the authority to extend the statutory time limit for filing an appeal under section 61(1) of the Act: see, *Quebecor Printing Inc.* (June 1, 2001, Board File No. 0607-01-HS) *Liquor Control Board of Ontario* (Aug. 29, 2001, Board File No. 1332-01-HS); *Laser Electric* [2006] OLRB Rep. July/Aug. 551 (August 21, 2006); and *Lac Des Iles Mine Ltd.*, O.O.H.S.A.D No. 111 (September 19, 2006, Board File No. 1589-06-HS).

19. Accordingly, as this application was not filed within 30 days after Inspector Cettina made his findings in Investigation Report No. 5636023 this appeal is untimely.

20. The application is dismissed.

2518-06-M International Brotherhood of Electrical Workers, Local 353, Applicant v. **AXA Electric Inc.**, Responding Party.

Discharge – Discharge for Union Activity – Interim Relief – Remedies – Unfair Labour Practice – Two union organizers were terminated in the midst of an organizing campaign and the union asked the Board to reinstate them on an interim basis pending resolution of the complaint – The employer argued it had terminated the two employees for cause, based on allegations of absenteeism and various performance and attitude issues – Neither of the employees had ever been disciplined nor had they received complaints from the employer prior to their terminations – The employer was aware that the two individuals were union supporters – The employees were notified about their terminations through email messages – The Board reinstated the two individuals pending the resolution of the unfair labour practice complaint – In doing so, the Board acknowledged that the period of time between an application for certification and the ultimate disposition is a particularly difficult one for a union in terms of maintaining the confidence of its supporters – The Board found the union would suffer irreparable harm in terms of erosion of support if interim relief of reinstatement was not granted and that the balance of harm favoured granting the order – Interim reinstatement ordered

BEFORE: Ian Anderson, Vice-Chair.

APPEARANCES; *Ron Lebi, Bill Martindale, Gideon Haasbroek* and *Jiemen Zhao* for the applicant; *Mike Barbu, Cornel Barbu* and *Vesa Calin* for the responding party.

DECISION OF THE BOARD; December 1, 2006

1. This is an application for interim relief under section 98 of the *Labour Relations Act, 1995*.

2. On August 22, 2006, the International Brotherhood of Electrical Workers, Local 353, applied for certification under the construction industry provisions of the *Labour Relations Act, 1995* with respect to certain employees of AXA Electric Inc. (Board File No. 1603-06-R). That application is still pending. On November 5, 2006, AXA terminated the employment of Kevin Bazely, Jiemen Zhao and Gideon Haasbroek. The IBEW has filed an application under section 96 alleging the employer's termination of Bazely, Zhao and Haasbroek was contrary to the Act (Board File No. 2519-06-U). In this application it seeks, as interim relief in that pending application, the reinstatement of Zhao and Haasbroek, along with other orders in support.

3. A consultation was held on November 27, 2006. In accordance with the Board's Rules of Procedure, the parties filed declarations and submissions in relation to the application for interim relief. The union filed declarations from Zhao, Haasbroek and Bill Martindale, a staff organizer for the union. The employer filed declarations from Cornel Barbu, Mike Barbu and Calin Vesa. All the declarants were present at the consultation. In order to enhance and clarify its understanding of the issues, the Board directed questions to some of the declarants and permitted each of the parties to do so.

4. Section 98(2) sets out four conditions which must be met before the Board may order interim reinstatement under section 98(1). Section 98(3) establishes a further condition which must be satisfied before the Board may order interim reinstatement. I will address the condition established by section 98(3) first, followed by the four conditions set out in section 98(2).

The Board shall not order interim reinstatement if it appears to the Board that the dismissal by the employer was unrelated to the exercise of rights under the Act by an employee: s. 98(3).

5. This condition requires the Board to determine whether it "appears" that the discipline or discharge was not causally related to the exercise of rights under the Act: *Patrolman Security Services Inc.*, [2005] OLRB Rep. Sept./Oct. 818 (October 6, 2005), at paragraph 52. This determination is not a finding of fact, rather it is based on a "preliminary assessment of the quality or robustness of the evidence likely to be heard and tested in the pending application": *Patrolman* at paragraph 67. In making this determination, the Board will have regard to all of the material before it, to determine how the explanation offered by the employer fits with the conduct alleged by the union and whether there appear to be any gaps in either the conduct complained of or the explanation: *K2 Electrical Contracting Ltd.* [2006] OLRB Rep. May/June 375 (june 22, 2006), at paragraph 44.

6. In this case, the employer argues that it had cause to terminate the employment of Zhao and Haasbroek. However, the question for the Board is whether the terminations of Zhao and Haasbroek appear to be tainted by anti-union animus. The absence of cause will give rise to an inference that the terminations were tainted by anti-union animus. However, even if cause exists, terminations will still be in breach of the Act if they are tainted by anti-union animus.

The Context

7. There is no dispute that the union filed an application for certification on August 22, 2006, that the Board commenced hearing status disputes with respect to the application for certification on October 30, 2006 and that further hearing dates are scheduled for January 2007. One individual whose status was in dispute was Kevin Bazely: the employer took the position that Bazely was an employee in the bargaining unit on the date of the application; the union took the opposite position. Bazely was called as a witness by the employer on October 30, 2006, at which time he testified that he was not an employee in the bargaining unit on the application date. On November 5, 2006, AXA terminated the employment of Bazely, and also of Zhao and Haasbroek, two individuals within the bargaining unit applied for.

Jiemen Zhao

8. Zhao declares that he has been employed by AXA since April 2006 and that he was one of the original supporters of the union since the start of its organizing campaign in the summer of 2006.

9. Zhao declares that Cornel Barbu, the president of the employer, was well aware of his support of the union. He declares that, prior to the October 30, 2006, hearing at the Board,

Cornel Barbu told him he was feeling quite confident about his company not being unionized. On Sunday November 5, 2006, he received an email from Cornel Barbu which reads as follows:

> Jackie,
>
> No thank you I don't eat deer. I appreciate your intention.
>
> I have a bad news for you. I decided to terminate your contract by tomorrow 5th of November. There are changes in our company and I have to take hard and difficult decisions for some people. I need to have different way for this company since this one is not the right one. In order to keep this business running I need to restructure the company. I know will affect [sic] good people as well but this is the decision that will try to save our company to collapse. Thank you for all you did for our company and I wish you the best.
>
> Best regards,
>
> Cornel

10. Zhao declares that he can think of no reason why his employment was terminated other than his union support. Prior to his termination, he was always quite busy and at the time of his termination there was, to his knowledge, no shortage of work. He had never received any complaints about his work from Cornel Barbu prior to November 5, 2006. He has tried to meet with Cornel Barbu since his termination but Cornel Barbu keeps giving him the "run around".

11. In its statement of agreement or disagreement with each fact or allegation in the application (the statement), the employer agrees that it was aware of Zhao's support for the union.

12. The declaration of Mike Barbu, filed on behalf of the employer, asserts that Zhao has "never really taken care of the job"; that every time Mike Barbu visits the site Zhao would be somewhere else; and that Zhao was constantly asking for time off. Cornel Barbu's declaration makes reference to the employer's Code of Conduct and Business, a copy of which is attached to the employer's material. However, all of the employers' declarations are silent with respect to whether the employer has taken disciplinary action against employees on the basis of this Code in the past. Cornel Barbu's decision does not specifically address the situation of Zhao: it contains no statement as to why he terminated his employment.

13. None of the declarations filed on behalf of the employer contradict Zhao's assertion that he had not previously received any complaints about his work from Cornel Barbu, nor do they suggest that Zhao had received complaints from anyone else about his work. The employer's declarations also leave unanswered Zhao's assertion that Cornel Barbu has given him the run around since his termination. Finally, the employer's declarations are completely silent about the employer's knowledge of Zhao's union involvement and do not contain a denial that his union involvement had something to do with the termination of his employment. The declarations filed by the employer thus leave many gaps in explaining the basis for the termination of Zhao, and fail to answer the union's allegation that the termination was related to his support for the union.

14. In its statement, the employer also makes a number of assertions which are not supported by the declarations it has filed. For the purposes of this decision, I assume without

deciding that the employer is entitled to rely upon those assertions of fact as well. The statement appears to assert that on Saturday November 4, 2006, Zhao told Cornel Barbu that he was going to take Monday November 6 and Tuesday November 7, 2006, off to go deer hunting. The text of an email from Zhao to Cornel Barbu is set out. The email references a request to Cornel Barbu by Zhao to take Monday and Tuesday off. The tenor of the email appears to suggest that Cornel Barbu had approved the leave. (At the consultation, counsel for the union advised the Board that this was indeed Zhao's position.) Nonetheless, in the statement, Cornel Barbu states that he did not approve of this leave. He states that he decided to send Zhao an email because he has had people react violently in the past to terminations and email was "safe" for him.

15. The statement alleges that Zhao had a number of other absences. As counsel for the union pointed out, several of the days referred to are holidays. At the consultation the employer took contradictory positions stating first that the absences were unauthorized and later they were authorized but a subject of concern.

16. The statement also refers to an increase in Zhao's wages from $12 per hour to $20 per hour, but states: "The reason I increased his salary was not for good work but for motivation at this stage."

17. As noted, the statement acknowledges that Cornel Barbu knew Zhao was a union supporter. Nonetheless, in its statement of position with respect to the union's representations, the employer denies that it knew that either Zhao or Haasbroek, were union supporters. At the consultation, the employer confirmed that it knew that Zhao was a union supporter.

18. The statement raises more questions than it answers. If Cornel Barbu had not approved Zhao's leave for November 6 and 7, 2006, why did he not simply advise Zhao of this in his email of November 5 and state his expectation that Zhao would in fact report to work on November 6 and 7, 2006? If Zhao had previous absences, as alleged, and if these were of such great concern to the employer, why didn't the employer raise the issue previously with Zhao in some manner? In addition, the employer's explanation as to why email was used on this occasion is not compelling. The Board notes that there is no suggestion in any of the employer's materials of past violent conduct on the part of Zhao. Further, at the consultation, the Board was advised that the employer sometimes terminates employees by email, sometimes in person and sometimes by mail. Similarly, the employer's explanation of past wage increases to Zhao does not have the ring of authenticity to it.

19. Based on the material before me, given the timing and circumstances of Zhao's termination, and the inadequacies of the employer's explanation, it does not appear that his dismissal by the employer was unrelated to the exercise of rights under the Act.

Gideon Haasbroek

20. Haasbroek declares that he also has been employed by AXA since April 2006 as an apprentice electrician and he was one of the original supporters of the union since the start of its organizing campaign in the summer of 2006.

21. Haasbroek declares that he had numerous discussions with numerous employees about the union and that he believes that Cornel Barbu is well aware of his support of the union. On Sunday November 5, 2006, he received an email from Cornel Barbu which reads as follows:

> Ghideon [sic],
>
> Your comments regarding AXA Electric Inc. performance are not acceptable since you never been asked by me to express this. This is a violation of our rules and denotes that your loyalty to my company is questionable.
>
> I cannot accept this since Axa Electric and personally myself I insisted to create a good environment and workplace for you to become good electrician. For this I am disappointed and I decided to terminate your contract by tomorrow 5th of November.
>
> There are changes in our company and I have to take hard and difficult decisions for some people.
>
> I need to have different way for this company since this one is not the right one. I need to restructure the company and keep inside of my company the people I trust. I know will affect [sic] good people as well but this is the decision that will try to save our company to collapse.
>
> Thank you for all you did for our company and I wish you the best.
>
> Best regards,
>
> Cornel

22. Haasbroek declares that he can think of no reason why his employment was terminated other than his union support. Prior to his termination, he was always quite busy. He had never received any complaints about his work from Cornel Barbu prior to November 5, 2006. With respect to the reference to "unacceptable comments" in the email, Haasbroek declares that on one occasion another AXA employee made a comment about how AXA was having trouble getting paid for work done for Canadian Tire. In response, Haasbroek declares he said words to the effect of "people get paid late when they finish the job late". At the consultation he identified the date of this conversation as November 3, 2006.

23. The company filed a brief declaration from Calin Vesa which is directed entirely to the comment. Vesa declares that Haasbroek said "the company did a shit job and if he had been the client, he would never have paid us". At the consultation, Haasbroek denied making this comment. Vesa also declares that a representative of the client was walking by at the time of the conversation and that he is concerned that person may have overheard the conversation.

24. Mike Barbu declares that Haasbroek was always making jokes at co-workers expense, had disobeyed orders of the foreman, resulting in damage to equipment, and had repeatedly caused damage to property, tools and materials. He also refers to a couple of "unpleasant confrontations" he had with Haasbroek. He declares that Haasbroek had never been disciplined in any way because the employer felt it had to give him a chance. It got to the point, he declares,

that after reviewing his performance and attitude, he decided to recommend termination of Haasbroek's employment to Cornel Barbu.

25. There is no reference at all to the Canadian Tire comment in Mike Barbu's declaration, and thus no basis to conclude that this comment, as opposed to the previously undisciplined performance issues, were the reasons for his recommendation to Cornel Barbu to terminate Haasbroek's employment. There is no specific reference to Haasbroek at all in Cornel Barbu's declaration, and thus no basis to conclude what his reasons for terminating Haasbroek were. None of the declarations filed on behalf of the employer contradict Haasbroek's assertion that he had not previously received any complaints about his work from Cornel Barbu, nor do they suggest that Zhao had received complaints from anyone else about his work. Finally, the employer's declarations are completely silent about the employer's knowledge of Haasbroek's union involvement and do not contain a denial that his union involvement had something to do with the termination of his employment.

26. The declarations filed by the employer thus leave many gaps in explaining the basis for the termination of Haasbroek, and fail to answer the union's allegation that the termination was related to his support for the union.

27. In its statement, the employer also makes a number of assertions in relation to Haasbroek which are not supported by the declarations it has filed. Once again, assuming without deciding that reference may be had to that statement, it does not assist the employer, but rather makes matters worse. While the statement makes reference to the Canadian Tire comment, it also indicates that the employer's initial view was to let the comment pass.

28. Based on the material before me, given the timing and circumstances of Haasbroek's termination, and the inadequacies of the employer's explanation, it does not appear that his dismissal by the employer was unrelated to the exercise of rights under the Act.

The circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway: s. 98(2) 1.

29. This condition requires the Board to "determine as a question of fact, whether the circumstances giving rise to the unfair labour practice complaint in the main pending application arose during a campaign to establish bargaining rights": *Patrolman* at paragraph 49.

30. The Board has held that a campaign to establish bargaining rights does not end with the filing of the application for certification, but comprehends resolution of status disputes in industrial applications and the prospect that a representation vote may be ordered in construction applications: *Cornwall Gravel Co. Ltd.* [2006] OLRB Rep. May/June 332 (June 30, 2006). In any event, in this case the parties agreed that this condition was satisfied. Accordingly, I find that the employer's actions took place within the context of an organizing campaign.

There is a serious issue to be decided in the pending proceeding: s. 98(2)2.

31. This condition requires the Board to "review the pleadings of both parties to determine whether there is a serious issue between them to adjudicate in the main application": *Patrolman* at paragraph 50.

32. The main application alleges that the employment of Zhao and Haasbroek was terminated for exercising rights under the Act. The Board has consistently found that an allegation of termination of employment contrary to the Act constitutes a serious issue to be decided in the pending application for the purposes of s. 98(2)2.: see for example *Patrolman* at paragraph 63. Accordingly, I find that that there is a serious issue to be decided in the pending unfair labour practice proceeding.

The interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives: s. 98(2)3.; and

The balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding: s.98(2)4.

33. These two conditions:

> … both require the Board to draw conclusions as to the likely prospective consequences to the parties where the relief sought is or is not granted. Both sections require the Board to attempt to anticipate the degree of harm or the labour relations consequences which will occur, as a result of the granting or withholding of relief. Both require the Board to examine the current circumstances of the parties and to then extrapolate to predict likely future outcomes.
>
> (*Patrolman* at paragraph 51.)

34. In *K2 Electrical*, at paragraph 30, the Board described the manner in which these determinations were to be made as follows:

> In my view, for the purposes of the interim application, the determination of each party's circumstances is to be made primarily on the declarations filed by that party, as supplemented through information obtained by the Board at the consultation, and through the application of the Board's experience, in particular with respect to the prediction as to likely future outcomes. This appears to me to be the nature of the exercise which the Board undertook in *Patrolman*.

35. The materials before the Board establish that both Zhao and Haasbroek were employed by AXA since April 2006. The union organizing campaign began in July 2006, and Zhao and Haasbroek were among the original supporters of the union. The employer has acknowledged that it was aware of Zhao's support for the union. Haasbroek declares that he had numerous discussions with numerous employees about the union. The termination of their employment, as noted, took place on November 5, 2006, the same day that Blazely's employment was terminated. This followed hard on the heels of Blazely giving evidence at the Board which was not favourable to the employer, notwithstanding the fact that he was called as a witness by the employer. Bill Martindale, an organizer employed by the union, declares that he has spoken to other employees who perceive the firings to be a direct result of supporting the union, and who have expressed fears to him that support for the union leads to reprisals.

36. In my view, on these facts, it is not unreasonable for employees to have reached this conclusion. I agree with counsel for the union that the period of time between an application for

certification and its ultimate disposition is a particularly difficult one for a union in terms of maintaining the confidence of its supporters, in particular when the resolution of disputes requires hearings over a protracted period of time. During this period, those employees may feel that they have had no tangible benefit from supporting the union, and indeed are at some risk for having done so. In the absence of any other apparent justification, as would appear to be the case here, the termination of union supporters in conjunction with a witness who gave evidence adverse to the employer, makes it seem that the risk has been realized. If that perception is not altered through interim relief by the Board, then the union will suffer irreparable harm in terms of erosion of support and ability to obtain evidence for the purposes of the status disputes.

37. The employer argues that an order of reinstatement would send a message to its employees that anyone can breach its Code of Conduct and not be penalized in any way. This, it states, would cause it irreparable harm.

38. I do not find the employer's argument compelling. The employer is free to enforce its Code of Conduct, but not if its decision to do so in any particular instance is tainted by anti-union animus. In any event, it is not apparent from the material filed with the Board that the employer does enforce its Code of Conduct.

39. Accordingly, I find that it is likely that the union would suffer irreparable harm if the order of interim reinstatement were not granted, and that the balance of harm favours the granting of the order.

Disposition

40. The Board Orders AXA Electric Inc. to:

a) reinstate Jiemen Zhao and Gideon Haasbroek immediately to their employment on the same terms and conditions they enjoyed prior to November 5, 2006;

b) refrain from suspending, discontinuing or otherwise terminating, Jiemen Zhao and Gideon Haasbroek's employment or changing the terms and conditions of their employment until the Board issues final decisions in the unfair labour practice complaint (Board File No. 2519-06-U) except with the consent of the Union or of the Board, on application by the responding party;

c) post a copy of this decision at its various projects in conspicuous locations where its employees are likely to see it;

d) keep these copies of this decision posted for not less than 30 days.

e) post a copy of the attached Notice to Employees at its various projects in conspicuous locations where its employees are likely to see it and keep it posted for 30 days.

41. I remain seized to deal with any issues arising out of the implementation of this decision.

Appendix "A"

The Labour Relations Act, 1995

NOTICE TO EMPLOYEES

Posted by order of the Ontario Labour Relations Board

We have posted this notice in compliance with a direction of the Board, issued after a hearing in which both the company and the union had the opportunity to make submissions.

The Board has ordered AXA Electric Inc. to reinstate Jiemen Zhao and Gideon Haasbroek ON AN INTERIM BASIS until the Board considers the reason for their discharge. A hearing before the Board will commence soon. The purpose of that hearing is to determine why Jiemen Zhao and Gideon Haasbroek were discharged.

If the Board ultimately determines that Jiemen Zhao and Gideon Haasbroek were discharged for improper conduct, and their support for the Union had nothing to do with it, the temporary reinstatement order will be revoked, and the Company will no longer be required to employ them.

If the Board ultimately finds that their discharge occurred because they were union supporters, exercising their rights under the *Labour Relations Act*, the Board may confirm their reinstatement, and direct that they be compensated for all earnings and benefits lost as a result of their discharge.

Employees in Ontario have these rights which are protected by law:

> An employee has the right to join a trade union of his or her own choice and to participate in its lawful activities.
>
> An employee has the right to oppose a trade union, or subject to the union security clause in the collective agreement with his or her employer, refuse to join a trade union.
>
> An employee has the right to cast a secret ballot in favour of, or in opposition to, a trade union if the Ontario Labour Relations Board directs a representation vote.
>
> An employee has the right not to be discriminated against or penalized by an employer or by a trade union because he or

> she is exercising rights under the *Labour Relations Act, 1995*, as amended.
>
> An employee has the right not to be penalized because he or she participated in a proceeding under the *Labour Relations Act, 1995*, as amended.
>
> An employee has the right to remain neutral, to refuse to sign documents opposing the union or to refuse to sign a union membership card.

It is unlawful for employees to be fired or in any way penalized for the exercise of these rights. If this happens, a complaint may be filled with the Ontario Labour Relations Board.

It is unlawful for anyone to use intimidation to compel someone else to become or refrain from becoming a member of a trade union, or to compel someone to refrain from exercising rights under the *Labour Relations Act, 1995*, as amended.

This is an official notice of the Board and must not be removed or defaced.

This notice must remain posted for 30 consecutive days.

DATED this 1st day of December, 2006.

2890-05-R Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. **Belanger Construction (1981) Inc.**, Responding Party v. International Union of Operating Engineers, Local 793 and United Brotherhood of Carpenters and Joiners of America, Local 2486, Intervenors.

Certification – Timeliness – The Labourers applied to represent non-construction employees of Belanger – The Operating Engineers ("Local 793") asserted that their all-employee collective agreement encompassed the employees in question, so the application was untimely – The work related to highway maintenance contracts Belanger entered into with the City of Sudbury and the Ministry of Transportation – Belanger used a combination of Local 793 members and other individuals to perform the work, and Local 793 had never taken steps to enforce the collective agreement it claimed related to the highway maintenance work – The Board held that a collective agreement that requires an employer to pay its employees in a particular way when they are performing work outside the scope of the agreement does not extend the scope of the agreement to cover that work – Timeliness argument dismissed, matter continues

BEFORE: *Harry Freedman*, Vice-Chair.

APPEARANCES: *Lorne A. Richmond, M. Ryan, M. O'Brien* and *P. Hickey* for the applicant; *Kathleen Stokes* and *Denis Shank* for the responding party and R. M. Belanger Limited; *Bruce Price, Ken Lew* and *Bruce Wooten* for International Union of Operating Engineers, Local 793; no one for United Brotherhood of Carpenters and Joiners of America, Local 2486.

DECISION OF THE BOARD; November 15, 2006

1. This is an application for certification under section 8 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") in which the applicant (the "Labourers") seeks to represent certain of the responding party's employees who are not employed in the construction industry. This application was filed on November 25, 2005. The International Union of Operating Engineers, Local 793 ("Local 793") intervened in this application asserting that the application was untimely as the employees the Labourers seek to represent were covered by one or more of its collective agreements at the time this application was filed. The Alternate-Chair of the Board authorized me to sit alone to hear and determine this matter pursuant to section 110(14)(a) of the Act.

2. The applicant claimed the employees affected by this application were employed by the responding party, Belanger Construction (1981) Limited ("Belanger Construction"). Belanger Construction took the position it had no employees in the bargaining unit proposed by the Labourers. The Board, differently constituted, by decision dated December 2, 2005 did not determine the appropriate bargaining unit but did establish a voting constituency and directed a representation vote. The Board in that decision declined to add R. M. Belanger Limited ("R. M. Belanger") as a party to this application and noted that Local 793 asserted it had collective agreements with R. M. Belanger.

3. When this matter first came before me for hearing, I was advised that the parties and R. M. Belanger were prepared to proceed with the application on the basis that Belanger Construction was the employer of the employees affected by this application, but that if the

Labourers are successful, the bargaining rights obtained by the Labourers would apply to R. M. Belanger. Local 793 asserts it hold bargaining rights for the non-construction employees of R. M. Belanger pursuant to collective agreements by which R. M. Belanger is bound. The parties and R. M. Belanger further agreed that for purposes of this application, the collective agreements and bargaining rights relied on by Local 793 are to be treated by the Board as being applicable to Belanger Construction.

4. For purposes of the balance of this decision, I will simply refer to "Belanger" as being the employer party to the collective agreements and the employer of the employees affected by this application.

5. The Labourers deny that the collective agreements Local 793 relies on as a bar to this application apply to the non-construction employees of Belanger engaged principally in highway maintenance and snowploughing throughout northern Ontario. The Labourers claim those collective agreements only apply to employees working in the construction industry. Alternatively, the Labourers assert that to the extent those collective agreements purport to cover non-construction employees, Local 793 had abandoned its bargaining rights for such employees before this application was filed. Belanger agrees with Local 793 and accepts that its collective agreements with Local 793 apply to its employees when they are not performing construction work but are engaged in snowploughing and highway maintenance work.

6. There were two collective agreements presented to the Board on which Local 793 and Belanger rely. One is a two page document that appears to grant voluntary recognition to Local 793 in respect of a bargaining unit comprised of operating engineers and binds the employer to the Provincial Collective Agreement applicable to the industrial, commercial and institutional sector of the construction industry, to the pipeline collective agreement applicable to the pipeline sector of the construction industry and to the EPSCA Agreement applicable to the electrical power systems sector of the construction industry. That recognition agreement was signed August 9, 1993. The other is a collective agreement Local 793 and Belanger referred to as the "all employee collective agreement" that was signed October 18, 1991. Belanger has not entered into or signed any other collective agreement with Local 793 since those two agreements were signed in October 1991 and August 1993.

7. Local 793 takes the position that both collective agreements continue to "roll-over" pursuant to the renewal provisions in those agreements. No party suggested that a notice of termination or notice to bargain had ever been issued by either Belanger or Local 793 in respect of those two agreements.

8. Bruce Wooten, a business representative for Local 793 for some 2½ years as of August 2006 responsible for the Sudbury area, testified that his geographic area of responsibility includes Timmins, North Bay, Manitoulin Island as well as Sudbury. He said that Belanger operates under the Sudbury Construction Association sewer and watermain collective agreement. Mr. Wooten testified in cross-examination by Belanger that he believed Belanger was subject to three collective agreements, the ICI provincial agreement, the Sudbury sewer and watermain agreement and the all employee agreement. He also acknowledged that Local 793 has never sought to amend the all employee agreement because it simply rolls over and picks up the wages from the Sudbury sewer and watermain agreement. Mr. Wooten, in cross-examination by the Labourers also acknowledged that he had no idea why there were two collective agreements

signed by Belanger. He explained that when he started as business agent he was told by his supervisor, Ed Kaplanis, about the two agreements, and that the 1991 all employee agreement was the one that continued to apply by picking up the current rates from the Sudbury sewer and watermain agreement. He also acknowledged there was nothing in that collective agreement about picking up new rates from time to time.

9. Denis Shank, the Fleet Manager and Safety Officer of Belanger explained the highway maintenance work carried out by Belanger. It has had two separate contracts for several years from the Ontario Ministry of Transportation ("MTO") for snow removal, ploughing, sanding and salting in the winter operating out of a number of MTO yards. In the summer, the roads are patrolled once a day for road kill, or other hazards. Belanger carries out summer road maintenance such as grading shoulders, installing and removing guard rails, and repairing plugged or broken culverts. He testified that Belanger carries out all kinds of construction work ranging from heavy civil work to commercial construction. Mr. Shank, in cross-examination by the Labourers, acknowledged that many of the people doing highway maintenance work were not members of Local 793.

10. Belanger has also done snow clearing, sanding and salting for the City of Sudbury. That work, according to Mr. Wooten, also was covered by the Local 793 all employee collective agreement. Although it was clear from the evidence that some Belanger employees who were not members of Local 793 did that work on equipment within the City of Sudbury, Mr. Wooten admitted that he had not checked to see if the people operating Belanger equipment, including trucks, were members of Local 793. Mr. Wooten explained that he had a large geographic area to cover and could not be in a position to check who was and who was not a member. When it was pointed out to him that he lived within the city of Sudbury and must have seen Belanger vehicles cleaning snow and salting streets in Sudbury, but did not check the membership status of those employees, Mr. Wooten admitted that he had not done so.

11. Belanger pointed out that it had made remittances under the Sudbury sewer and watermain agreement for members of Local 793 working on highway maintenance but that the work they did was outside the scope of that collective agreement, that is the Sudbury sewer and watermain agreement. Belanger also acknowledged that some individuals who were not members of Local 793 had been working on the MTO highway maintenance contracts for a number of years. Indeed, the evidence indicated and Belanger agreed that the majority of employees doing the work on the MTO highway maintenance contracts were not members of Local 793 and that Local 793 had not attempted to enforce any collective agreement in respect of those employees doing that work.

12. When Belanger performed sewer and watermain construction outside of the Sudbury area, specifically in the town of Georgina in January 1997, Local 793 did take steps to enforce its "all employee" province wide collective agreement that Belanger had entered into in 1991 by filing a grievance and referring that grievance to the Board for determination under section 133 of the Act.

13. The evidence demonstrated that Belanger had been employing both members of Local 793 and individuals who were not members of Local 793 for many years on the highway maintenance contracts it obtained from both the City of Sudbury and the MTO. It was also apparent from the evidence that Local 793 had not taken any steps to enforce the collective

agreement it claims applies to that highway maintenance work, at least in respect of individuals who were not members of Local 793 employed by Belanger to perform that work. Local 793 asserts it did not know that persons who were not its members were performing highway maintenance work and therefore its failure to enforce the collective agreements in relation to such individuals cannot be used to support a finding that it had abandoned its bargaining rights.

14. It is apparent that Local 793 and Belanger did not treat the work on the highway maintenance contracts obtained from the MTO and the City of Sudbury in the same fashion as they treated construction work performed by Belanger. The highway maintenance work was not work within the construction industry. Local 793 clearly was not diligent in taking steps to enforce the collective agreement it now asserts covers the employees doing that work. The failure of Mr. Wooten to conduct even a cursory investigation of the non-construction work performed by Belanger to determine if Belanger was abiding by its obligations under the Local 793 collective agreement raises the inference that Local 793 did not believe its collective agreements covered Belanger employees doing that work. It is also apparent Belanger dealt with employees working on the highway maintenance work who were not members of Local 793 as if they were not subject to any collective agreement.

15. The first issue to address is whether the collective agreements relied on by Local 793 applied to the non-construction highway maintenance work carried out by Belanger. If one of the collective agreements did at one time apply to such work, the next question raised by the applicant is whether Local 793 abandoned its bargaining rights under that agreement.

16. The starting point for the analysis of the issues is the language of the collective agreements. The two page August 9, 1993 collective agreement describes a typical bargaining unit for operating engineers (all employees engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of the same and employees engaged as surveyors) "in all sectors of the construction industry in the Province of Ontario and engaged in any such work outside of the construction industry in the said Province." The balance of the August '93 collective agreement binds Belanger to the provincial collective agreement entered into by Local 793 and the Operating Engineers Employer Bargaining Agency, the collective agreement between the International Union of Operating Engineers and the Pipeline Contractors' Association of Canada, and the collective agreement between the Electrical Power Systems Construction Association and the Ontario Allied Construction Trades Council.

17. While the August '93 collective agreement purports to include operating engineers performing work outside of the construction industry, the collective agreements referred to in the August '93 collective agreement (provincial ICI agreement, pipeline agreement and EPSCA agreement) by which Belanger agreed to be bound are all construction industry collective agreements. There was nothing in that August '93 collective agreement dealing with the wages, working conditions, or employer obligations in respect of employees working outside the construction industry. In the result, despite the scope clause purporting to extend the August '93 collective agreement to employees who do not work in the construction industry, I am of the view that without having any terms and conditions applicable to such employees, it cannot, as of November 2005, be construed as applying to employees of Belanger when they are working on highway maintenance rather than construction.

18. During the course of argument, Local 793 suggested that the October 1991 "all employee" collective agreement was the more significant collective agreement as it clearly applied to all employees of Belanger, not just persons employed as operating engineers. Moreover, Local 793 contended the all employee collective agreement specifically applied to employees of Belanger working outside of the construction industry.

19. Belanger submitted the employees who are the subject of this application are not employed in the construction industry when they are engaged in work covered by the MTO and City of Sudbury contracts. Belanger also points out that the all employee collective agreement is broad enough to cover employees doing that work but concedes it did not make remittances for anyone who was not a member of Local 793 when they were working under those MTO and City of Sudbury highway maintenance contracts. The remittances for members of Local 793 working under the MTO contracts were made pursuant to the Sudbury sewer and watermain collective agreement despite the fact the work they performed did not come within the scope of that collective agreement. During the entire time Belanger did the highway maintenance work pursuant to the MTO contracts, members of Local 793 and many others who were not members of Local 793 performed that work. The members of Local 793 doing that work were also employed by Belanger to perform construction work as required. Indeed, Mr. Shank explained that Belanger had some "steady guys" (members of Local 793) with the requisite licences and training who Belanger wanted to keep working. They were assigned to work on the winter maintenance contracts if their skills were needed to perform the available work.

20. Belanger is operated by Ron Belanger. Mr. Shank indicated that Mr. Belanger determines which employees will be assigned to work on particular jobs. Mr. Shank also conceded that members of Local 793, when working on the MTO highway maintenance work are paid the rates established by the Sudbury sewer and watermain collective agreement. Road construction and road maintenance are paid at the same rate which is the rate under the sewer and watermain collective agreement. Mr. Shank conceded in cross-examination by the Labourers that individuals working on the MTO highway maintenance contracts who were not members of Local 793 were paid different rates and had different deductions. Mr. Wooten, in his evidence, indicated that he knew Mr. Belanger and thought he was a "nice guy" personally, but in terms of working under a collective agreement, he referred to Mr. Belanger as "a handful" and "quite a cheater". Mr. Wooten indicated that he had filed many grievances against Belanger which were ultimately resolved. Belanger admitted that it had "issues about applying the strict terms of the collective agreement" and the hiring of persons who were not members of Local 793 to work on highway maintenance was a good example of those issues.

21. Belanger submitted that but for the "all employee" October '91 collective agreement it was under no obligation to employ members of Local 793 on MTO and City of Sudbury road maintenance work. It submitted that the all employee collective agreement must have required Belanger to hire members of Local 793. Otherwise, it would be employing members of Local 793 when it was under no obligation to do so. Belanger contends that despite having a number of persons who were not members of Local 793 working on the MTO highway maintenance work, the all employee collective agreement applied to the members of Local 793 who were doing that work. The applicable rates under the Sudbury sewer and watermain agreements were paid to the members of Local 793 doing that work and remittances were made by Belanger on their behalf.

22. The relevant portions of the October 1991 collective agreement provide:

WHEREAS the purpose of this Collective Agreement is to establish rates of wages, fringe benefits, hours of work and other working conditions within the Construction Industry in which the Employer participates and provide for and ensure uniform interpretation and application in the administration of this Collective Agreement.

ARTICLE 1 – GEOGRAPHIC AREA

1.1 This Agreement shall be effective within the Province of Ontario.

1.2 The terms set out herein and the Schedule attached hereto shall apply to all work performed by the Employer in the Construction Industry excluding work performed within the industrial, commercial and institutional sector, EPSCA and the pipeline sector.

ARTICLE 2 – RECOGNITION

…

2.1 The Employer recognizes the Union as the sole and exclusive bargaining agent for all employees of the Employer engaged in work in the Province of Ontario (covered by the classifications set out in this Agreement, and any additional classifications as may be agreed to by the parties).

2.2 Therefore, this Agreement, between the Union and the Employer, signed by the accredited officials of both parties, has been mutually agreed upon and the terms as laid out shall be carried out in letter and spirit by both parties. The Agreement covers all employees of the Employer save and except for the following: non-working foreman and those above the rank of non-working foreman, scalepersons, security guards, certified engineering technicians, kitchen staff, office staff, graduate engineers from a University, students employed for the school vacation period, warehousepersons and all work incidental thereto and common labourers in the Geographical Area of the district of Algoma including that portion of the District of Algoma which lies north of the 49th parallel of latitude and which is not within the Ontario Labour Relations Board Area No. 21, the District of Sudbury (excluding that portion lying north of Highway 101 West to the border of the District of Algoma), Manitoulin Island, Nipissing, Temiskaming, Parry Sound and part of the District of Cochrane lying south of the 49th parallel.

…

2.4 It is further agreed that where practical, employees (other than regular employees) of the Employer will be required to obtain a Clearance Card from the Union provided that the Union maintains a regular dispatch office within a reasonable distance from the project.

…

2.8 It is understood and agreed that where the Company does work outside Northern Ontario where a "Dominating Agreement" is applicable, that

> the wage rates of all employee classifications herein contained but not contained in the "Dominating Agreement" shall be adjusted to reflect similar group classifications therein contained, or where there are no similar group classifications, on a proportionate basis.
>
> 2.9 The terms and conditions of employment as set out in the schedules of this Agreement, both monetary and non-monetary, shall apply to all construction work performed in all sectors of the construction industry, save and except the Electrical Power Systems (E.P.S.C.A.), Pipeline and I.C.I. sectors. Such work shall be governed by the terms and conditions of Schedule "B" attached hereto, which is incorporated into and forms part of this Agreement.
>
> ...
>
> **ARTICLE 3 – UNION SECURITY**
>
> 3.1 Each employee shall, when working in a position within the bargaining unit described in Article 2 hereof, be required, as a condition of employment, to have dues checked off on the basis of 1% of the net pay rate for all hours earned, plus $18.50 per month in monthly dues. Such deductions shall be remitted together with the contributions required under Articles 12 and 13 of this Agreement on or before the 15th day of the month following the month in which such deductions were made. The Employer shall, when making all remittances to the Union, identify employees both by name and social insurance number and indicate the amount deducted from each employee.
>
> ...
>
> **ARTICLE 11 – HOURS OF WORK, RATES OF WAGES, VACATION AND STATUTORY HOLIDAY ALLOWANCE AND WORK CONDITIONS**
>
> ...
>
> 11.5 It is expressly agreed that non-construction work, snow removal and sanding operations shall be performed at straight time rates under the classifications listed in this Agreement

It is important to note that the recital, sections 1.2 and 2.9 refer to the construction industry and construction work. Section 3.1 refers to the bargaining unit described in Article 2. The only specific reference in that collective agreement to work done by employees outside of the construction industry is found in section 11.5. As the Labourers point out, section 11.5 is a part of Article 11 which deals with hours of work, wage rates and holidays. Although section 2.1 provides that Belanger voluntarily recognized Local 793 "for all employees ... engaged in work in the Province of Ontario" which would seem to suggest recognition extending beyond the construction industry, that recognition is limited to work "covered by the classifications set out in this Agreement, and any additional classifications as may be agreed to by the parties". The classifications in the collective agreement appear to me to relate to work normally performed in the construction industry. That view of those classifications is consistent with the recital, which stated that the purpose of the agreement was "to establish ... working conditions in the

Construction Industry" and section 2.9 which made clear the agreement applies to construction work.

23. The bargaining unit for which Local 793 holds bargaining rights under the October 1991 collective agreement is, in my view, quite explicitly set out in sections 2.1 and 2.2 which on their face exclude labourers working in the district of Algoma. It is also apparent that the collective agreement explicitly applies to the construction industry. While section 11.5 of the collective agreement obliges the employer to have non-construction work done at straight time rates for the classifications set out in the collective agreement, section 11.5 does not, in my view, extend the bargaining unit described in the collective agreement to encompass persons who are not working in the construction industry. Section 11.5 merely obliges the employer to pay certain rates when the employees engaged in construction work covered by the collective agreement are assigned to perform non-construction work.

24. It seems to me a collective agreement that imposes an obligation on an employer to pay its employees in a particular way when they are performing work that appears to fall outside the scope of the collective agreement does not, in and of itself, extend the scope of that collective agreement to cover that work. See, for example *Main Rehabilitation Co.*, decision dated August 28, 2001, Board File Nos. 0348-01-R, 0350-01-R, unreported, Q.L. cite [2001] OLRD No. 3496. In that case, the employer was bound to a collective agreement with the geographic scope of the bargaining unit limited to Board Areas 8 and 18. The collective agreement contained provisions requiring the payment of a travel allowance when employees worked outside of certain defined zones, including zones outside the geographic scope of the bargaining unit. Employees who were paid the travel allowance when they were working in Board Area 3 claimed they were at work in the bargaining unit because they were receiving the travel allowance under the collective agreement. The Board disagreed when it wrote at paragraphs 15 and 16:

> 15. We conclude that the "travel allowance" Articles do not extend the geographic scope of the bargaining unit. The description of the geographic scope of the two collective agreements is quite precise….
>
> 16. Reading the "travel allowance" Articles in context, it is apparent that the obligation to maintain wages extends to certain parts of the geographic area of each collective agreement. That is, the Articles apply to employees who are "sent" by their employer outside the Greater Toronto Free Zone (Sewer and Watermain Agreement) or Zones 1 and 2 (Heavy Agreement), whether or not those locations are still within the geographic scope of the collective agreement or not. We conclude and that these Articles simply confer a wage benefit to certain individuals if they are "sent" by their employer to certain locations beyond a defined radius, whether their destination is inside or outside the geographic area covered by the collective agreements.

In my view, that same sort of analysis applies to employees who are engaged in "non-construction work, snow removal and sanding operations" within the meaning of section 11.5 of the collective agreement. That is, when Belanger assigned its construction employees who worked under the collective agreement to perform that work which was outside the scope of the bargaining unit defined in the collective agreement, it undertook to pay them at the rates specified in the collective agreement.

25. The practice of the parties with respect to non-construction work under the MTO and City of Sudbury contracts for snowploughing and road maintenance is consistent with an interpretation of the collective agreement finding that the bargaining unit did not encompass employees engaged in such work. Local 793 did not at any time seek to enforce the dues check-off and benefit remittance obligations with respect to persons who were not members of Local 793 working on highway maintenance and snowploughing. While Local 793 suggests that it was unaware of who was working on those snowploughs, the evidence of Belanger demonstrated there were far more people who were not members of Local 793 operating the snowploughs in the winter and engaging in road maintenance in the summer than there were members of Local 793. It seems to me that even a cursory review of the work done by Belanger employees and the remittances made by Belanger would have demonstrated there were a large number of individuals working for Belanger outside of the construction industry under those MTO and City of Sudbury contracts for whom no dues and benefit payments were being remitted to Local 793. Its lack of due diligence or perhaps its wilful blindness to the situation cannot, in my view, be used by Local 793 to justify its ignorance of the situation.

26. Belanger made remittances on behalf of members of Local 793 doing the non-construction work under those MTO and City of Sudbury contracts. Local 793 and Belanger point to that fact to argue that Local 793 had applied its collective agreements to that kind of work in respect of its members and therefore the City of Sudbury and MTO highway maintenance work came within the scope of its collective agreement. I disagree. It is apparent to me that members of Local 793 were moved by Belanger from construction work to non-construction work and back again, as determined by Ron Belanger, to make the best use of the trained and skilled employees working for Belanger. Rather than lose those members of Local 793 when there was insufficient construction work, Belanger moved them to perform non-construction work but continued their pay, benefits and remittances in accordance with section 11.5 of the collective agreement. That is, although members of Local 793 were working outside the scope of the bargaining unit described in the collective agreement, Belanger continued to treat them as if they were subject to it.

27. Applying the collective agreement to certain employees and not others does not demonstrate an employer is bound by that collective agreement. It simply means the employer was abiding by it in respect of certain individuals. Merely because parties abide by the terms and conditions of a collective agreement does not result in those parties being bound by that collective agreement. See *Comstock Canada Ltd.*, [2006] OLRB Rep. July/August 501 (July 6, 2006); *Ecodyne Limited*, [1979] OLRB Rep. July 629; *R.N. Mechanical Ltd.* [2000] OLRB Rep. Jan./Feb. 121 (January 12, 2000). Moreover, the absence of any attempt by Local 793 to enforce the dues check-off and benefit remittance obligations in respect of employees working on highway maintenance who were not members of Local 793 suggests it understood the scope of its collective agreement was limited to the construction industry. Simply put, I am satisfied the bargaining unit did not extend to employees engaged in the non-construction work described in section 11.5 of the collective agreement.

28. The Labourers claimed the Local 793 collective agreements by which Belanger is bound did not apply to the employees engaged in highway maintenance or, in the alternative, that Local 793 had abandoned bargaining rights under those collective agreements in respect of such employees. It is not necessary for me to comment on the abandonment argument as I am satisfied, based on the language of the collective agreements and the conduct of the parties, that

those agreements have never applied to the non-construction highway maintenance work, including snowploughing, sanding and salting, carried out by Belanger. In the result, this application for certification is timely.

29. It appears there are a number of issues that remain outstanding in this application for certification, including voter eligibility and the description of the appropriate bargaining unit. Under the circumstances, it seems to me that this application should once again be referred to the Manager of Field Services for the purpose of having a Labour Relations Officer meet with the parties and attempt to resolve, or at least narrow the issues that remain outstanding.

30. This panel of the Board is not seized with this matter.

31. When this application first came before me for hearing, it was listed together with three other applications filed by the Labourers in Board File Nos. 2971-05-R, 3035-05-U and 3186-05-M. The parties, at the commencement of the hearing, agreed the Board would proceed with only this application for certification. Under these circumstances, the Board directs the Labourers to advise the Registrar, with a copy to the other parties, within 15 days of the date of this decision how they wish to have the Board deal with those other three matters in light of this decision.

1264-06-R Service Employees International Union Local 1.on, Applicant v. **Care2000 Health Services**, Responding Party.

Certification – Membership Evidence – Practice and Procedure – After a certification vote where sixteen of eighteen ballots were cast in favour of the union, the employer repeated in its post vote submissions the allegations in its response: namely that two union organizers had come to the employer's office and stolen a contact list of current employees, which had been used for the purpose of contacting the employees during the organizing drive – The employer asked the Board to dismiss the application pursuant to its discretionary powers contained in section 23(1) of the *Statutory Powers and Procedure Act* arguing that the union's actions amounted to an abuse of process since the application for certification was the 'poisoned fruit' of the illegally obtained list – The Board noted that section 8(9) of the Act precluded the Board from having regard to allegations of this nature when disposing of an application for certification – The Board noted there was no allegation that the union's membership evidence was either false or misleading, nor were there any allegations that misrepresentations had been made to any employees – While the Board recognized that the union's alleged actions may have compromised the trust between the union and employer, employees' access to trade unions and collective bargaining are central purposes of the Act – The Board found there was no basis upon which to decline to grant the application for certification – Certification granted

BEFORE: *Ian Anderson*, Vice-Chair, and Board Members *R. O'Connor* and *R. R. Montague*.

APPEARANCES: *Kelvin Kucey* and *Bill Hulme* appeared for the applicant; *Mark Geiger* and *Kimberley Debassige* appeared for the responding party.

DECISION OF THE BOARD: December 1, 2006

1. This is an application for certification under the *Labour Relations Act, 1995*.

Background

2. The union filed this application on July 21, 2006. The employer filed its response on July 25, 2006. It agreed with the bargaining unit description proposed by the union, but gave notice under section 8.1 of the Act. In its response the employer also alleged, with particulars, that two individuals came to its offices on June 12, 2006 on false pretences and stole a "contact list" of current, past and prospective employees. The employer alleged that the two individuals were acting on behalf of the union and that the list was subsequently used by the union for the purposes of contacting its employees. To entertain the application, the employer argued, would be tantamount to rewarding the union for a criminal act and would constitute an abuse of the Board's processes. The employer, therefore, requested that the application be dismissed without a vote.

3. By decision dated July 26, 2006, the Board (differently constituted) found that the difference between the parties for the purposes of section 8.1 was not numerically significant. The Board directed that a representation vote be held and the vote be counted. The employer's allegations of theft were referred to the panel hearing this matter.

4. The representation vote was held on July 28, 2006. Sixteen ballots were cast in favour of the union, one opposed, and one was segregated.

5. The employer filed post vote representations in which it repeated its allegations of theft. The union filed post vote representations in which it denied that it had obtained a copy of the employee list from the employer.

6. The only relief the employer seeks is the dismissal of the union's application for certification on the basis that it constitutes an abuse of process. The employer has not filed an application under section 11.1 seeking another representation vote or dismissal of the application on the basis that the union, or persons acting on its behalf, has contravened the Act and as a result the true wishes of the employees in the bargaining unit are not likely reflected in the representation vote. The employer has not filed an application under section 96 of the Act seeking a remedy on the basis that the union has breached some other section of the Act. (Nor has the employer filed criminal charges.)

7. This matter came on for a hearing on November 16, 2006. We directed the employer to argue the matter based on its best case, that is assuming all of the facts which it pled were true.

Analysis

8. The relevant parts of section 8 of the Act provide as follows:

> **8.** (1) Upon receiving an application for certification, the Board may determine the voting constituency to be used for a representation vote and in doing so shall take into account,

> (a) the description of the proposed bargaining unit included in the application for certification; and
>
> (b) the description, if any, of the bargaining unit that the employer proposes.
>
> (2) .... If the Board determines that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appear to be members of the union at the time the application was filed, the Board shall direct that a representation vote be taken among the individuals in the voting constituency.
>
> (3) .... The determination under subsection (2) shall be based only upon the information provided in the application for certification and the accompanying information provided under subsection 7(13).
>
> (4) .... The Board shall not hold a hearing when making a decision under subsection (1) or (2).
>
> (5) .... Unless the Board directs otherwise, the representation vote shall be held within five days (excluding Saturdays, Sundays and holidays) after the day on which the application for certification is filed with the Board.
>
> ....
>
> (8) .... After the representation vote has been taken, the Board may hold a hearing if the Board considers it necessary in order to dispose of the application for certification.
>
> (9) .... When disposing of an application for certification, the Board shall not consider any challenge to the information provided under subsection 7(13).

Section 7(13) provides as follows:

> 7. (13) The application for certification shall be accompanied by a list of the names of the union members in the proposed bargaining unit and evidence of their status as union members, but the trade union shall not give this information to the employer.

9. The determination to direct a vote under section 8 is largely administrative. If, as in this case, the union appears to have the support of 40 per cent or more of the individuals in its proposed bargaining unit, section 8(2) of the Act requires the Board to direct a representation vote be held. Significantly, in making this determination, section 8(3) of the Act states the Board is only to have regard to information provided by the union in its application for certification and the membership evidence it files with that application (i.e. the information provided under section 7(13)). The Act, therefore, precludes the Board from having regard to allegations of the type made by the employer in deciding whether to direct a vote.

10. Further, section 8(9) states that the Board shall not consider "any challenge" to the union's membership evidence in disposing of an application for certification. The Act, therefore, precludes the Board from having regard to allegations of the type made by the employer after the vote, to the extent that those allegations are relied upon as challenges to the union's membership evidence.

11. While it was not argued before us, we note that section 64(1) of the Act provides that where a union obtains a bargaining certificate by fraud, the Board may declare that the union no longer represents the employees in the bargaining unit. Section 64(2) provides that section 8(9) does not apply with respect to an application for a declaration under section 64(1). As stated in *Alcan Aluminium Limited* [1997] OLRB Rep. May/June 305, at paragraph 93:

> Historically, this kind of fraud has consisted of the filing by a trade union of false or misleading membership evidence or materials in support thereof (and has generally been referred to as "fraud on the Board"), or of a trade union making representations to employees which raises a doubt regarding whether the membership evidence filed by the trade union represents a true expression of the wishes of the employees. Alcan's allegations do not raise an issue of fraud on the Board. Assuming that there is still room for the "misrepresentation to employees" kind of fraud under the current Act (which has replaced the primarily card based representation scheme which existed previously under which the remedy generally given for such fraud was a representation vote, with a vote based representation scheme where there is a "vote in every case"), there is no suggestion of any fraud on the employees in this case.

Similarly, in this case, there is no allegation that the membership evidence filed with the Board by the union is false and misleading, only that the employer's list of employees was improperly obtained. Nor is there any allegation of misrepresentations made to the employees in order to obtain that membership evidence, assuming that this "misrepresentation to employees" kind of fraud is even relevant under the current Act.

12. Finally, section 10(1) and (2) of the Act provide:

> **10.** (1) The Board shall certify a trade union as the bargaining agent of the employees in a bargaining unit that is determined by the Board to be appropriate for collective bargaining if more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union.
>
> (2) .... The Board shall not certify the trade union as bargaining agent and shall dismiss the application for certification if 50 per cent or less of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union.

13. Thus, the Act sets out an expedited largely administrative procedure which requires the Board to give effect to the wishes of the majority of the individuals in a bargaining unit as to whether or not they wish to be represented by an applicant union save for three circumstances:

> a. A numerically significant challenge by the employer under section 8.1 to the union's estimate of the number of employees in the bargaining unit;
>
> b. Where the true wishes of the employees were not likely reflected in the representation vote as a result of the union, or person's acting on behalf of the union, having engaged in conduct which contravenes the Act (section 11.1); and
>
> c. Where, after certification has been granted, the Board determines that the union obtained the certificate by fraud (section 64).

14. Counsel for the employer acknowledges the statutory scheme of the Act. He does not suggest that any of the three circumstances set out above exist, or, if the certificate were granted, will exist. Rather he relies upon section 23(1) of the *Statutory Powers Procedures Act*:

> A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent an abuse of process.

15. Counsel refers the Board to three cases concerning the interpretation and application of that section: *Codina v. Law Society of Upper Canada* (1996) 93 O.A.C. 214 (Ont. Div. Ct.); *Metropolitan Toronto Housing Authority v. Ahmed [*2001] O.J. No. 1477 WL 448830 (Ont. Div. Ct.); and *Royal & SunAlliance Insurance Co. of Canada v. Volfson* (2005) 260 D.L.R. (4th) 374.

16. In *Codina*, on an application for judicial review, the court upheld a decision of the Disciplinary Committee of the Law Society. That tribunal held that its power to prevent an abuse of process included the power to exclude from a hearing the applicant's choice of representative, Harry Kopyto, a lawyer himself disbarred on grounds of his "pervasive dishonesty", on the basis that it could not rely on his integrity, honesty and forthrightness, and therefore he was not competent to represent the applicant.

17. In *Metropolitan Toronto Housing Authority*, on an appeal from the Ontario Rental Housing Tribunal, the court held that permitting MTHA as landlord to rely upon a decision of the Tribunal obtained in the absence of the tenants whose non-attendance was the result of a misrepresentation by agents of the landlord, would constitute an abuse of process and, if left undisturbed, would result in a miscarriage of justice.

18. In *Volfson*, on an application for judicial review, the court upheld a decision of the Director's Delegate of the Financial Services Commission of Ontario. That tribunal held that Volfson, a treatment provider who commenced proceedings before the tribunal on behalf of an accident victim to whom he had provided treatment, should himself be made a party and subjected to the tribunal's jurisdiction to award costs in order to prevent an abuse of its processes. The proceedings were in relation to a claim for which Volfson had already received payment pursuant to a settlement entered into by the accident victim. Volfson had commenced the proceedings without the victim's authorization, and indeed had forged the victim's signature on documents in order to do so.

19. All of the cases relied upon by counsel for the employer relate to behaviour within the context of proceedings before the tribunal in question. In this case, by contrast, the alleged theft predates any proceedings before the Board.

20. Counsel argues, however, that the application for certification is the "poisoned fruit" of criminal conduct by the union, and thus the application constitutes the abuse of process. While conceding that appropriation by the union of the employee information on the contact list would not constitute theft (see *R. v. Stewart* [1988] 1 S.C.R. 963), counsel argues that the appropriation of the physical list itself constitutes theft. The application for certification, he argues, is the "poisoned fruit" of this illegally obtained list. Therefore, he argues, the Board should refuse to deal with the application since it constitutes an abuse of process.

21. We do not accept this argument. First, while no authority was offered by counsel with respect to the concept of "poisoned fruit", it is in fact a creature of American courts which provides for the automatic exclusion of evidence. This automatic exclusionary rule has been rejected in Canada for a more nuanced approach: see *R. v. Calder* [1996] 1 S.C.R. 660 at paragraph 31; *R. v. Orbanski; R. v.* [2005] 2 S.C.R. 3. Second, both the American "poisoned fruit" exclusionary rule and the Canadian exclusionary rule apply to evidence obtained by the police or other state agents in the context of criminal law proceedings. They have no application to evidence obtained by private individuals, such as the parties to this litigation. Third, and in any event, counsel's argument amounts to a challenge to the membership evidence filed by the union. As reviewed above, section 8(9) of the Act precludes the Board from considering any such challenge.

22. Counsel for the employer argues that the union's representation to the Board that it did not obtain the list from the employer is itself an abuse of the Board's process. Counsel for the employer states that he is not suggesting that counsel for the union has intentionally misled the Board, but he is suggesting that counsel for the union did not "do his homework". The union's representation to the Board, counsel for the employer states, is false and can be proven to be so.

23. We do not accept this argument. Pleadings in proceedings before the Board usually involve contested facts. Absent an intention to mislead the Board, the fact that the Board ultimately accepts one version of facts does not retroactively render the filing of the other version of facts with the Board an abuse of process. The opposite conclusion would render the filings of one party or the other an abuse of process in virtually every case before the Board.

24. Counsel for the employer places reliance upon the decision of the Manitoba Labour Board in *Intelicom Ltd. t/a Trojan Security Services v. Manitoba Food & Commercial Workers, Local 832* [1991] M.L.B.D. No. 15 (May 10, 1991). In that case the employer alleged that the union's organizing drive was based on a copy of the list of employees which the union had fraudulently obtained from the employer. The Manitoba Labour Board concluded that the allegation of fraud was not made out. Counsel relies however on statements made by the Manitoba Labour Board about the importance of the integrity of its proceedings, the need to be "extremely vigilant in ascertaining all proceedings are carried out without fraud", and that "fraud on the Board or any of the parties to this process is serious, and for that reason the Board has investigated the matter to the best of its ability".

25. Since that decision arises in a different statutory context, we find it of little assistance. We of course share the concern about ensuring the integrity of our proceedings. To the extent, however, that it suggests that, absent a statutory grant, a labour board has the authority to investigate fraud upon the parties, as opposed to on that board, we respectfully disagree: see *Ontario Power Generation Inc.* [2001] OLRB Rep. May/June 860 (May 14, 2001) at paragraph 18 et seq. In any event, even if the false pretences used by the two individuals to arrange the meeting with the employer in this case could be considered fraud, the appropriation of the list was not accomplished by those false pretences, but rather through theft. The employer's remedy for that lies elsewhere.

26. Finally, counsel for the employer notes that a purpose of the Act is to facilitate collective bargaining. He argues that collective bargaining requires a degree of trust which will be entirely missing in this case, given the employer has a fundamental belief that the union has engaged in theft.

27. While sound labour relations is predicated on a degree of trust between the parties, the scheme of the Act would obviously be entirely frustrated if such trust was elevated to the status of a prerequisite for certification.

28. Section 2 of the Act provides:

> **2.** The following are the purposes of the Act:
>
> 1.......... To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees.
>
> 2.......... To recognize the importance of workplace parties adapting to change.
>
> 3.......... To promote flexibility, productivity and employee involvement in the workplace.
>
> 4.......... To encourage communication between employers and employees in the workplace.
>
> 5.......... To recognize the importance of economic growth as the foundation for mutually beneficial relations amongst employers, employees and trade unions.
>
> 6.......... To encourage co-operative participation of employers and trade unions in resolving workplace issues.
>
> 7. To promote the expeditious resolution of workplace disputes.

Further section 5 of the Act provides:

> **5.** Every person is free to join a trade union of the person's own choice and to participate in its lawful activities.

29. As these provisions make clear, employees' access to trade unions and collective bargaining is a central purpose of the Act. In the three cornered relationship of employees, employers and trade unions recognized by the Act, it is not apparent why employees should be denied their democratic choice of a trade union simply because the employer does not trust that union.

30. Accordingly, on the employer's best case, we see no basis on which to decline to grant the union's application for certification. Indeed, given the scheme of the Act set out above, it appears to us that we are required to certify in the circumstances of this case.

Disposition

31. Having regard to the agreement of the parties, the Board finds that the following constitutes a unit of employees of the employer appropriate for collective bargaining:

> all employees of Care2000 Health Services, in the City of Toronto, Ontario, save and except Registered Nurses, physiotherapists, occupational therapists, supervisors, delivery sales people, or persons above the rank of supervisors and office staff.

32. On the taking of the representation vote directed by the Board, more than fifty per cent of the ballots cast by employees in the bargaining unit were cast in favour of the applicant.

33. A certificate will issue to the union.

34. The Registrar will destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before then.

35. The employer is directed to post copies of this decision immediately at its head office. Those copies are to remain posted for a period of 30 days. In addition, given the employees rarely attend at the employer's office, the employer is to take all reasonable steps to ensure that every employee receives a copy of this decision.

2954-05-R Labourers' International Union of North America and Labourers' International Union of North America, Ontario Provincial District Council, Applicants v. Hydro One Inc. (including: Hydro One Networks Inc., Hydro One Networks Services Inc., Hydro One Remote Communities Inc.) and **De Beers Canada Inc**., Responding Parties.

***Prima Facie* Case – Related Employer – Sale Of Business – In order to build and operate a diamond mine, De Beers needed to construct an energy transmission line – Pursuant to the *Transmission Systems Code*, De Beers elected to build the line itself and upon completion would then be required to transfer ownership of the line to Hydro One –**

This process was established in a decision rendered by the Ontario Energy Board and was then implemented into the *Code* – Hydro One and De Beers brought two motions asking the Board to dismiss the Labourers' 69/1(4) applications without a hearing – The respondents sought to have the application dismissed as a collateral attack on the decision of the Ontario Energy Board and as disclosing no *prima facie* case – The Board determined that the application does not seek to attack or undermine the legal effect or order of the decision of the Ontario Energy Board, and is thus not a collateral attack – Although the Ontario Energy Board decision establishes that companies have the freedom to choose who they want to construct transmission lines, the issue of collective agreements and restrictions on contracting were not addressed in the decision – The Board confirmed that the test for a *prima facie* case is high and discretion to dismiss a complaint on this basis should only be exercised in the clearest of cases – The Board dismissed the respondents' *prima facie* motion as the conveyance of the transmission line upon completion raises a sufficient case such that it cannot be said that the application stands no reasonable chance of success – Matter continues

BEFORE: *David A. McKee*, Vice-Chair.

APPEARANCES: *Robert Gibson, Harold Bartlett* and *Joe Mulhall* for the applicant; *Scott T. Williams, Jon Rebick* and *David Curtis* for Hydro One; *James G. Knight, Ian Blue* and *Anthony Copland* for De Beers Canada Inc.

DECISION OF THE BOARD; December 5, 2006

1. This is an application under subsection 1(4) and section 69 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, as amended (the "Act"). The applicant (the "Labourers") asserts that De Beers Canada Inc. ("De Beers") and Hydro One Inc. along with the other responding parties (collectively "Hydro One"), should be treated as one employer for all purposes of the Act. Alternatively, they seek a declaration that there has been a sale of part of the business from Hydro One to De Beers.

Facts

2. De Beers is in the business of mining and marketing diamonds. It is not usually involved in construction. It is building a mine in Northern Ontario called the Victor Diamond Mine. The mine is in a very remote location. The closest settlement is the Attawapiskat First Nation near James Bay. To operate the diamond mine and the residential quarters housing employees on the site, De Beers needs a large quantity of electricity that requires it to draw power from the provincial grid operated by Hydro One. Although there are powerlines to communities along the shores of James Bay up to Attawapiskat, these lines cannot carry the volume of power that De Beers needs. It is therefore necessary to build a high-voltage transmission line from Otter Rapids Transformer Station (north of the Abitibi Canyon), which is the closest point of the high voltage lines of the provincial grid, to the Victor Diamond Mine Site.

3. This line will be built by De Beers, which will contract with a line contractor. This is a process determined and approved under the *Transmission Systems Code*, a code promulgated by the Ontario Energy Board, and which forms a part of Hydro One's operating licence. Pursuant to that Code, De Beers made a request to Hydro One for the delivery of power. Hydro One was

required by the Code to respond to such a request in a particular way. Hydro One is required to produce a plan for the construction of the line. The work is divided into "uncontestable work" (work on existing Hydro One facilities) or "contestable" work (essentially new construction). Hydro One must produce detailed plans and specifications for this work, and provide a cost price for both portions of the work. The customer, in this case De Beers, has a choice with respect to the contestable work. It can require Hydro One to build the new line, or it can undertake the work itself. In this case, De Beers decided to do the work itself. It has entered into a contract with a Quebec-based contractor to build the contestable work. This contractor is not bound to any collective agreement in the Province of Ontario. Hydro One will inspect and oversee the work to the extent necessary to ensure that the line is built according to its requirements. Once the new line is connected, De Beers will transfer ownership of the line to Hydro One, which will transmit power along it to the Victor Diamond Mine.

4. The plan for construction was submitted to the Ontario Energy Board for approval. The application was approved on July 19, 2005. Although the *Transmission Systems Code* was not effective until July 25, 2005, it became upon publication in the *Ontario Gazette*, a condition of the licence to build the transmission line.

5. I should note as well, there is another party, Five Nations Energy Inc. (the Attawapiskat First Nation is a participant), which was also party to the application to the Ontario Energy Board and to the construction arrangement. Five Nations Energy Inc. owns the transmission station at the Attawapiskat First Nation through which the line will be routed. Work done on that transmission station is uncontestable work and will be done by Hydro One. No relief is sought against Five Nations Energy Inc. in this application.

6. The applicants assert that these facts reveal a sale of part of the business from Hydro One to De Beers, namely the construction of a high-voltage transmission line, or that De Beers and Hydro One should be treated as one employer for all purposes of the Act with respect to such construction.

7. The responding parties have brought two motions asking the Board to dismiss the application without a hearing. The first motion is that the relief sought in this application, and indeed the entire application, is a collateral attack on the decision of the Ontario Energy Board in promulgating the *Transmission Systems Code*, or alternatively that it is an abuse of process to permit this application to go forward. Secondly, the responding parties ask that this matter be dismissed, as the application does not set out a *prima facie* case.

"Collateral Attack" or "Abuse of Process"

8. The first motion to dismiss the application was based on the assertion that the application represents a collateral attack on a decision of the Ontario Energy Board in setting a transmission system code under the *Ontario Energy Board Act*, and more generally, a collateral attack on what De Beers describes as "the Government of Ontario's electricity regulatory structure". In the alternative, the responding parties argued that the application was an abuse of process for the same reason. They ask that the application be dismissed.

9. The facts on which the responding parties rely are as follows. The *Electricity Act, 1998*, and the *Ontario Energy Board Act* permit the Ontario Energy Board to set "Codes" which,

pursuant to section 70.1(1) of the *Ontario Energy Board Act* "may be incorporated by reference as a condition of a licence under that section". Section 70.1(7) specifically refers to a Transmission System Code. Such licences govern the activity of all parties holding a licence to transmit electricity in the Province of Ontario. The primary transmitter, of course, is Hydro One, although there are, for some local purposes, others, such as the Five Nations Energy Inc. Thus, while the Code is not a statute or a regulation in itself, it in effect governs all transmission systems and facilities in the Province of Ontario.

10. In 2002, the Ontario Energy Board sought submissions with respect to the drafting of a new Transmission Systems Code. Various unions made submissions to the Ontario Energy Board. The Labourers did not do so. The Ontario Energy Board issued a decision dated June 8, 2004 in which it created a new Transmission Systems Code and explained why it had done what it did. The new *Transmission Systems Code* was effective July 25, 2005.

11. Once the Ontario Energy Board issues a Code, which automatically becomes a condition of any licence, there is a right of appeal, first to Divisional Court (and presumably beyond) under section 33(1) of the *Energy Board Act*, and ultimately by way of a petition to the Lieutenant Governor of Council within 21 days of the issuing of the Code (section 34(1)) independent of any appeal to a court. The Labourers did neither.

12. De Beers argued that the effect of the Ontario Energy Board's decision, and the Code it promulgated, was to mandate virtually unrestricted competition in the construction of new transmission lines and that the results sought in this application would force De Beers to engage Hydro One to build the line or to engage a contractor who was bound to the same collective agreements between the Labourers and Hydro One. This, De Beers argues, is a collateral attack on the Ontario Energy Board's decision to set the Code in the manner that it did.

13. De Beers cited two decisions of the Supreme Court of Canada on this doctrine: *R. v. Consolidated Maybrun Mines Ltd.*, [1998] 1 S.C.R. 706 and *R. v. Al Klippert Ltd.*, [1998] 1 S.C.R. 737. At its most basic, the rule may be stated as follows. Every decision or order of a court or (as in these two cases) an administrative tribunal, is open to question or attack or an appeal or review, but only in the correct forum. Absent specific statutory provisions, there is only one appropriate place to make such an attack. There may be a question as to which is the appropriate forum in which to make that attack, and the Supreme Court of Canada set out the various factors to be considered in determining which is the appropriate forum. (I need not deal with these factors, as I conclude the appropriate place to attack the *Transmission Systems Code* would be in Divisional Court or to the Lieutenant Governor in Council.) If an attempt is made to challenge or attack an order or decision in another forum, that attempt must be dismissed as a collateral attack on the validity of the order or decision. That is, the attack cannot be made in the wrong forum. If the decision or order is relevant in the other forum, it must be treated as binding and unassailable.

14. This doctrine is a fairly precise and specific one. The Labourers referred to a discussion of the doctrine in *Toronto (City) v. CUPE, Local 79* [2003] 3 S.C.R. 77. In that case, the union had grieved the discharge of an employee who had been discharged for sexual abuse of a member of the public. He had been convicted of a criminal offence in Provincial Court. The union did not seek to attack the conviction itself. However, its case was that the alleged assaults did not occur, and it succeeded in persuading the arbitrator to come to that conclusion. The

decision of the arbitrator was challenged as a collateral attack on the criminal conviction. The Supreme Court of Canada disagreed, saying at paragraph 34:

> 34. Each of these cases concerns the appropriate forum for collateral attacks upon the judgment itself. However, in the case at bar, the union does not seek to overturn the sexual abuse conviction itself, but simply contest, for the purposes of a different claim with different legal consequences, whether the conviction was correct. It is an implicit attack on the correctness of the factual basis of the decision, not a contest about whether that decision has legal force, as clearly it does. Prohibited "collateral attacks" are abuses of the court's process. However, in light of the focus of the collateral attack rule on attacking the order itself and its legal effect, I believe that the better approach here is to go directly to the doctrine of abuse of process.

It did, however, find that the union's approach was an abuse of process, on the basis that a re-litigation of the facts underlying the criminal conviction engages "the inherent power of the court to prevent the misuse of its procedure, in the way that would .... bring the administration of justice into disrepute" (paragraph 37). Therefore, the appeal of the decision quashing the order of the arbitrator was denied.

15. Turning to the facts of this case, to deal with the "collateral attack" argument first, it is necessary to find an order or an effective decision of the Ontario Energy Board that this application attacks. The order made by the Ontario Energy Board is, of course, the *Transmission Systems Code*. That is, the equivalent of the order or the conviction referred to in the decisions of the Supreme Court of Canada above. There is also a decision in which the Ontario Energy Board explains why it did what it did. (I was not given a copy of the full decision, but only an 18-page summary prepared by the Ontario Energy Board. I have relied on that summary.) The purpose of the decision is to give the reasons why the Ontario Energy Board promulgated the Code in the manner that it did. This decision is not the order or effective act of the Ontario Energy Board. It is simply an explanation.

16. De Beers argued that the effect of the Code was to give customers such as De Beers the right to have the transmission line built by it own forces or by any party that it chooses to contract with. Competition is, in its view, to be entirely unfettered and open to all who wish to bid on the work, whether they are bound to a collective agreement or otherwise. In their argument, if the application were to be successful, it would mean that:

> 33. .... the effect will be precisely as the applicant intends; in other words, given the structure of the OEB Act, every time an arm's length entity wishes to lawfully make use of the provisions of the OEB Act to obtain approval to construct a transmission line with respect to which Hydro One is a transmitter, the initiative, inexorably, will be subject to the applicants' collective agreements. This would defeat the Legislature's electricity policy, which is plainly designed to allow an entity like De Beers to construct something like the Transmission Line entirely free and clear from Hydro One, if it so chooses.

17. Alternatively, De Beers argues that if it is not a collateral attack on the decision of the Ontario Energy Board, it is an abuse of process. It seeks, without challenging the *Transmission Systems Code*, to re-litigate a question of freedom from restrictions on competition that were

litigated before the Ontario Energy Board. On either basis, De Beers, supported by Hydro One, argues that the application should be dismissed.

18. This argument must be analyzed in terms of both the theoretical and practical effect of any order the Board might make. If the Board were to find that a sale had taken place, then De Beers may retain certain parts of Hydro One's business, but it would do so "free and clear" of Hydro One. Conveyance usually involves the relinquishing of proprietary rights on the part of the seller. The practical reality is that the effect of such an order is that Be Beers would be bound to the same collective agreements as Hydro One, and one or more of those collective agreements may tie it into the continuing operation of Hydro One. If the Board were to issue a "single employer" declaration under section 1(4), then in theory De Beers is, for purposes of the Act, identical to Hydro One. In practical terms, it may mean simply that De Beers is bound to the same collective agreements as Hydro One and is bound to observe the terms of those collective agreements when contracting work. In that case, it could operate freely without more reference to Hydro One than the *Transmission Systems Code* requires.

19. The real issue is the extent to which the relief sought or granted in this case requires De Beers to have Hydro One build the line rather than some other entity with which it might choose to contract. If the effect of the order is to require De Beers and Hydro One to build the line together, or if it requires the employees of Hydro One to perform the construction work on the line, it might well run contrary to, at the least, the "philosophy behind the Code". If the effect of the order is to bind De Beers to certain collective agreements that may restrict its choice of contractor other than Hydro One, then such an order would not conflict in any way with the Code.

20. There is nothing in the *Transmission Systems Code* that specifically requires a customer to be able to contract the work to any contractor, regardless of who that contractor is or what other obligations or qualifications they may have. Counsel directed me to section 6.6 of the *Transmission Systems Code* dealing with "Contestability". Section 6.6.1 says:

> Where a load customer requires new connection facilities, a transmitter shall allow the load customer to elect either to provide its own connection facilities or to require the transmitter to provide them. Where the load customer elects to require the transmitter to provide the connection facilities, the transmitter shall also allow the load customer to elect to have any associated, contestable construction or design work … carried out by a party other than the transmitter.

If the applications were successful in some manner, one effect of the Board's order would likely be that De Beers was bound to the same collective agreements that Hydro One was bound to with the Labourers. Some provisions of those agreements might affect the choice of contractor who could perform the work. That does not interfere with the operation of section 6.6.1 quoted above. If De Beers were bound by a pre-existing collective agreement, that too might have an effect on its choice of contractors. That is a matter entirely separate from the right of a customer under the Code to "provide its own connection facilities" as an alternative to having them provided by Hydro One. Collective agreement obligations, financial limits, availability of bidders, the availability of expertise, and other commercial considerations, may all play a part in the decision made by the customer. The Code says nothing about any of this.

21. The summary of the decision of the Ontario Energy Board certainly refers to choice and competition as goals to be achieved by the Code. However, it does so in the context of a change from a monopoly source of transmission system construction (i.e. Hydro One) to an open market for such construction. For example:

> The Board took the view that a transmitter should not have an automatic right to assign available capacity service to a new customer load where it involves transformation connection facilities. ... This allows for greater competition which should lead to more economic efficiency on the part of the transmitter without resulting in any uncompensated stranding of connection assets. It also enhances customer choice. (page 3)
>
> If a customer chooses to build its own line or transformation connection facilities to serve new load, those new facilities may also be used to serve existing load without compensating the transmitter only if the existing transmitter's facilities are overloaded. ... The underlying rationale for the decisions above, to facilitate greater competition in the transmission connections market, is the Board's interest in providing reasonable opportunities for new approaches to system change as long as customers and transmitters are not unduly prejudiced. (page 5)
>
> Work on new connection facilities will be contestable, regardless of whether a capital contribution is required from the customer to facilitate competition. (page 13)
>
> The Board prefers that responsive customer service and accountability be brought about through market forces rather than other methods such as resorting to fines or penalties. The Board's approach also provides business opportunities for private and innovative companies across Ontario. It also gives the customer other options if the transmitter does not provide good service. (page 14)
>
> The changes should ensure that the transmitters' monopoly position will not restrain competition in areas where greater competition is beneficial and should also facilitate the ability of parties to effect efficiencies in their use of electricity without facing punitive measures or disincentives. (page 17)

The reasons for the decision say nothing about the various factors that may limit or affect the range of options available to a customer seeking to perform its own construction work. It is all about moving from a monopoly of Hydro One to an open market of contractors, including Hydro One.

22. Competition and the restrictive provisions of a collective agreement on subcontracting or contracting out are not inconsistent. There is certainly competition in other sectors of the construction industry such as the ICI sector, notwithstanding the high rate of unionization in that sector. The fact that some employers are bound to the collective agreement and some are not, does not mean that the market is not a competitive one. Some "builders" engaging in construction through contractors may also be bound to collective agreements with subcontracting provisions that limit their choice of contractor from whom they may accept bids. That does not mean that the market is an uncompetitive one.

23. In their submissions, the responding parties did not refer in detail to the decision of the Ontario Energy Board to permit construction of this transmission systems line, although it is included in the Labourers' materials. That decision does not refer at all to the contractor to be used, nor to any collective agreement. It simply permits De Beers to build a line, as requested, subject to the environmental assessments and other approvals that were necessary. The relief sought in this application does not contain anything that would in any way affect or alter the decision that the Ontario Energy Board made in granting permission for construction.

24. Thus, I conclude that the application, as framed, does not seek to attack or undermine the legal effect or order of a decision of the Ontario Energy Board, and is therefore not a collateral attack on the decision or the Code. It is not an attempt to re-litigate any of the factual or legal questions that were determined by the Ontario Energy Board, and therefore does not constitute an abuse of process.

25. If the application is successful, then there may be some orders that would lead to a conflict with either a specific terms of the Code, or that are at odds with the philosophy behind the Code. Whether there are any, and if so whether such conflict is a reason for refusing to grant some or all relief, or for limiting the type of relief granted, remains to be seen. In saying this, I do not mean to suggest that any conflict must inevitably and invariably cause the Board to limit or deny relief. *Prima facie*, a proper application under the *Labour Relations Act, 1995* is not a collateral attack on a decision made by another tribunal under a different statute for different purposes. The *Labour Relations Act, 1995* seeks to regulate and govern labour relations. The *Electricity Act, 1998* seeks to regulate a wide variety of activities that relate to the generation, transmission, consumption of, and payment for electricity in Ontario. Neither is complementary to, or in conflict with the other. Nor is there any hierarchy between the two statutes prescribed. The *Electricity Act, 1998* provides very specific provisions that override specific statutes, e.g. section 3:

> 3. This Act applies despite the provisions of the *Municipal Act, 2001* relating to the production, manufacture, distribution or supply of a public utility by a municipality or a municipal service board.

and general provisions where the provisions of the *Electricity Act 1998* override all other statutes, e.g. subsection 161.2(3):

> 161.2 (1) The Lieutenant Governor in Council may make orders transferring the following:
>
> 1. Assets, liabilities, rights and obligations of the IESO relating to market surveillance and the Market Surveillance Panel to the Board.
>
> 2. Assets, liabilities, rights and obligations of the IESO relating to the forecasting of electricity demand and the adequacy and reliability of electricity resources for the medium and long term to the OPA
>
> **Binding on all persons**
>
> (2) A transfer order is binding on the transferor, transferee and all other persons and does not require the consent of any person.
>
> **Same**
>
> (3) Subsection (2) applies despite any general or special Act or any rule of law, including an Act or rule of law that requires notice or registration of transfers.

There is no reference in the *Electricity Act, 1998* or the *Ontario Energy Board Act* to the *Ontario Labour Relations Act, 1995*.

26. De Beers filed the briefs of two trade unions to the Energy Board made during the consultation process that led up to the promulgating of the Code, one by the Power Workers Union and the International Brotherhood of Electrical Workers. The Power Workers Union, which represents employees of Hydro One, was generally opposed to the proposal. The International Brotherhood of Electrical Workers, a construction union like the applicant in this case, looked favourably on a new and competitive market, and sought only to ensure that there were no unfair restrictions on their contractors. Presumably these positions are a reflection of the perception of the Power Workers Union that the proposal would limit the potential work opportunities available to its members. In contrast, the International Brotherhood of Electrical Workers found the proposal less threatening to its interests as a union that represents workers employed by a variety of contractors from time to time under collective agreements that permit contracting out. Parties' perceptions and predictions of their self-interest may prove inaccurate, but the different positions before the Ontario Energy Board do point out the perceptions of two parties on the likely different effect of the Code on their different types of collective agreements.

27. The construction of this transmission line will be subject to many statutes other than the *Electricity Act, 1998*. The reference to environmental assessments in the decision permitting the building of the line indicates one such group of statutes. The construction of the line will be subject to the terms of the *Employment Standards Act, 2000*. Even if there were a contractor who could persuade people to work for terms and conditions below those set out in the *Employment Standards Act, 2000*, they would be unable to do so, despite the "wide-open competition" mandated by the Code. The *Labour Relations Act, 1995* may also impose certain restrictions as a result of this application, the certification of employees of a contractor constructing the line, or other sorts of events. I do not accept the implicit argument that the *Labour Relations Act, 1995* can apply only to those issues that have no consequence at all on the operation of the *Electricity Act, 1998*, or any other statute.

28. Hence even if at the end of the day, the relief sought by the Union is in some way in conflict with the policy behind the Code, it is not necessarily axiomatic that this conflict must be resolved by means of adapting the relief available under the Act to what appears to be the policy of the Code.

29. At its narrowest, then, the motion must be dismissed. Strictly speaking, there is no order of the Ontario Energy Board that the applicants seek to undermine or contradict. The issue of collective agreements generally, and restrictions on contracting in particular, were not dealt with at all by the Ontario Energy Board. Thus, both the "collateral attack" and the "abuse of process" arguments fail. More generally, the issue of whether there is a conflict between the Code and what the Board might be prepared to do in this case, and what if anything the Board ought to do about any such conflict, is a matter to be argued at the end of the case.

Prima Facie Case

30. This argument can be dealt with very briefly. The test for a *prima facie* case is a high one. The Board's discretion to dismiss a complaint on the grounds that it does not disclose a

prima facie case should only be exercised in the clearest of cases, that is, when the Board is satisfied that there is no reasonable likelihood that the case can succeed.

31. I do not accept the proposition asserted by the Labourers that a union need only plead that there has been a sale or that two or more businesses carry on associated or related activities under common direction and control to achieve a standard necessary to state a *prima facie* case. However, in this case, the Union has pleaded a great deal. Frankly, if it had pleaded less, the responding parties' motion would never have been made. For example, if the Union had pleaded that "De Beers and Hydro One are jointly building a transmission line from Ottawa River to the Victor Diamond Mine Site", that would certainly raise a *prima facie* case, despite the explanations that would have been forthcoming from the responding parties. The fact that the Labourers pled in some detail the factual and regulatory background of that work was helpful to me in understanding the nature of the case, and there is nothing to be gained by penalizing detailed and extensive pleadings.

32. I did, in fact, commence the hearing by seeking to determine if there were really any serious disagreements about factual matters. I concluded that I could not say that there were none, and therefore I did not require the parties to argue their case at that time. I remain unconvinced, however, that there are very many areas that will require detailed *viva voce* evidence.

33. In any event, the submission fails on its own grounds. One example will suffice. Both responding parties, although principally Hydro One, took the position that, at the end of the construction work, ownership of the transmission line must be turned over to Hydro One by virtue of the *Transmission Systems Code*. Thus, the responding parties say, the fact that De Beers will build the line and then transfer ownership to Hydro One, is not evidence of a set of facts leading to a related employer situation, but merely a statement of what the parties are required to do by law. I need not deal with that argument, as it lacks any factual underpinning. The responding parties referred me to no provision of the Code that requires a transfer of the transmission facilities. Section 6.6.2(b)(c) of the Code requires Hydro One to advise De Beers of:

> "The right of a load customer to transfer any dedicated connection facilities it constructs to the transmitter and the obligation of a load customer to transfer non-dedicated connection facilities that it constructs to the transmitter".

There is obviously a difference between a right and an obligation. This is reflected in the summary of the Ontario Energy Board's decision at page 13:

> to accept the transmitter's cost of constructing "A customer requiring new facilities to connect to the transmission system will have two options. The customer can either design, construct, pay for and own the new facilities or have them owned by the transmitter. If the latter, a customer may choose the new facilities or contract with any qualified contractor".

34. No doubt, some evidence will shed further light on the nature of and reasons for a conveyance of the transmission line to Hydro One following its completion, but this issue alone raises a sufficient case that it cannot be said that the application stands no reasonable chance of success.

35. Therefore, the motion to dismiss the application as not disclosing a *prima facie* case is dismissed.

Production of Documents

36. Since this matter will be proceeding, it is necessary to take the preliminary steps required for a coherent related employer/sale of business application. Counsel for the Labourers has asked for large number of documents. I must confess that I do not share his enthusiasm for extensive document production. At the end of the day, I suspect that there are only a small number of areas in which there will be disputed facts or evidentiary conflict. However, I cannot say that for certain.

37. This does raise a problem that has become an increasingly difficult one for the Board administratively. Related employer applications can consume many days of hearing. This is in part the nature of such applications. The applicant union knows only a few facts and is generally too cautious to accept without considerable cross-examination the facts asserted by the employer. Often the conduct of a related employer application consists of a search for documents that the applicant hopes will form the basis for contradicting what the responding parties say about their relationship. Trade union counsel believe, with varying degrees of accuracy, that all but the most straightforward applications will succeed only as a result of cross-examination. That is not to say that such cross-examination is always, or even often, useful in advancing a union's case.

38. The bulk of the applicant's work in a related employer application consists of a kind of documentary discovery of the responding parties affairs. At present much of that discovery takes place during the hearing, as more and better documents are sought. This leads to delay, the production of further documents, and the recalling of witnesses, all of which consume time unproductively. Inevitably, applicant counsel will have to do this work: either before or during the hearing. There is no reason why at the very least, the document discovery ought not to be conducted before the first day of evidence. This may delay the first day of hearing, but by making more efficient use of hearing time (for which parties must set aside one or more full days) it should accelerate the arrival of the last day of hearing.

39. This is a case that would, in my view, benefit from such an approach. In argument, union counsel suggested that the application relied on events and transactions that were independent of actions mandated or regulated by the Transmissions Systems Code. He did not say what they were, nor do the pleadings indicate any such facts. Presumably he has theories about what the documents he hopes to obtain will demonstrate. This case, however, deals with a large transmission line that has been examined in detail in a public fashion. These parties and the type of construction are not likely to be conducted on the basis of a handshake and payments in cash. Whether any viva voce evidence will need to be called remains to be seen. Certainly the Board will not be receptive to assertions that evidence needs to be called if the only reason for the assertion is that parties have not applied themselves in the production or discovery phase of the case.

40. I therefore make the following series of directions. The hearing of this application will be heard at the same time as an application by the Canadian Union of Skilled Workers in Board File 0574-06-R. These directions apply equally to that application, subject to any submissions the

parties in that case (who were the same as the parties or were represented by the same counsel in this case) have in respect of what appears to be an identical application.

41. In this decision, when I refer to the production of documents, I mean, at least initially, producing those documents at a convenient location for inspection by the Labourers. An office at the Attawapiskat First Nation is not a convenient location. However, given the apparently huge volume of material the Labourers wish to see, it is appropriate to start with asking them to attend where those documents are, in order to review them and to indicate which documents they wish to be copied.

42. The applicant has already set out a very extensive list of documents that counsel wishes to review. If there are more, counsel must identify them forthwith. I direct the responding parties to produce all of those documents sought by the Labourers, which they do not object to producing, as soon as can reasonably be accommodated. The responding parties are at the same time to provide copies to the Unions of all documents on which they intend to rely or may rely during the course of the proceeding.

43. With respect to documents requested that do not exist, the responding parties are directed to advise the Labourers of that fact as soon as possible.

44. With respect to documents the responding parties object to producing, the party in control or possession of the documents shall provide a letter to the other parties and to the Board setting out the documents that do in fact exist, and the reasons for objecting to their production. This statement should be provided to the Board within four weeks of the date of this decision. The Labourers may respond as to why the documents ought to be produced within two weeks and final submissions by the responding parties will be due one week after that. The weeks commencing December 18 and December 25 are not to be counted in these calculations.

45. Once the applicant has had production of the documents at whatever stage of the process, it will indicate which documents it wishes to have copied. The party in possession of the document shall provide the Labourers with one clean copy of the document.

46. There are occasions on which a review of documents will provide the applicant with the information or understanding of certain issues that require the production of other documents. If that is the case here, the Labourers must identify what further documents they wish to see within three weeks of receiving copies of the documents, and the employer should respond quickly. By any such second round of document production, the issue should be sufficiently focussed that any disputes over document production should be settled by conference call, provided the parties make the request in writing, with copies of any documents necessary to understand the matter attached.

47. Following the production of documents, the Labourers must file and distribute, in an organized bound fashion, all of the documents on which they wish to rely or may wish to rely. Within two weeks after receiving that material, the responding parties must file in a similar fashion, all additional documents on which they wish to rely or may rely.

48. Following that, it would be useful to attempt to narrow down the areas on which *viva voce* evidence needs to be given. Given the amount of documentation involved in this case, it

would appear to me that there are only likely to be a few areas where *viva voce* evidence is likely to be necessary. I therefore direct the Labourers at that time to identify the areas on which they wish to cross-examine a witness with knowledge of the area. Once this process has been completed, the matter can then be set for hearing, with some idea of the number of days that will be necessary.

49. I remain seized of these cases, and will deal with any difficulties encountered in the pre-hearing process by writing or by telephone conference call.

2386-06-R Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. 1425105 Ontario Inc. o/a **Les Burch & Son Contracting,** Responding Party.

Certification – Construction Industry – Employee – Membership Evidence – Practice and Procedure – Reconsideration – The employer requested reconsideration of the Board's decision to certify the union under s. 128.1 based on membership evidence filed by the union on behalf of more than 55% of the employees in the bargaining unit – The employer filed affidavit evidence, in which each affiant stated they had not signed a union membership card, from three of its five employees who were on the list of employees the Board considered when it made its certification determination – The allegations were specific, detailed and quite serious as they raised an issue of fraud or misrepresentation – The Board noted that at least one of the three affiants appeared to have signed a union membership card, however the Board did not disclose the degree of overlap between the membership evidence and the three affiants nor did it disclose the identity of the person or persons who appeared to have signed a card – The Board set the request for reconsideration down for hearing – Matter continues

BEFORE: *Harry Freedman*, Vice-Chair.

DECISION OF THE BOARD; December 1, 2006

1. The Board, by decision dated November 7, 2006, certified the applicant ("Labourers") pursuant to section 128.1(13)(a) of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") as the exclusive bargaining agent for a bargaining unit of construction labourers employed by the responding party because the Board was satisfied that more than fifty-five per cent of the employees in the bargaining unit were members of the Labourers on the date the application was filed. The Board noted the Labourers had filed membership evidence on behalf of three persons, all of whom were on the list of five employees submitted by the responding party.

2. The responding party seeks reconsideration of that decision by a request for reconsideration filed on November 28, 2006. The request for reconsideration was made within the time prescribed by Rule 18.3 of the Board's Rules of Procedure.

3. The responding party in its request for reconsideration asserts that after John Burch, president of the responding party, posted the decision in the workplace certifying the applicant,

Dave Morley, an employee of the responding party, advised Mr. Burch that he had never signed a union membership card and that it was Mr. Morley's understanding that Joe Clement and Brad Haight, two other employees of the responding party, had not signed union membership cards either. Subsequently, Messrs. Clement and Haight told Mr. Burch they too had not signed union membership cards. Messrs. Morley, Clement and Haight were three of the five persons named on the list of employees filed by the responding party in this application for certification.

4. The responding party, in addition to alleging what those three persons had told Mr. Burch, asserts that Messrs. Morley, Clement and Haight voluntarily provided Mr. Burch with sworn affidavits stating they did not sign membership cards. The affidavits of those three persons were attached to the request for reconsideration.

5. The Board has reviewed the membership evidence filed by the applicant and the submissions and affidavits filed by the responding party. The Board is not prepared to disclose at this point in this proceeding whether the applicant filed membership evidence that appeared to be on behalf of one, two or all three of the affiants by reason of section 119(1) of the Act which provides:

> The records of a trade union relating to membership or any records that may disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union produced in a proceeding before the Board is for the exclusive use of the Board and its officers and shall not, except with the consent of the Board, be disclosed, and no person shall, except with the consent of the Board, be compelled to disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union.

The Board will disclose, however, that the membership evidence filed by the applicant is in the name of and purports to be signed by at least one of the three affiants.

6. While the three affidavits are different from one another, all three affidavits describe the work the affiant was performing for the responding party on the application date and that the affiant was aware of the application for certification filed on October 30th. Each affidavit states that the affiant "did not prior to October 30, 2006 or on or after October 30, 2006 sign a union membership card signifying that I agreed to be a member of the Labourers' Union."

7. As the Board indicated in its November 7th decision, the Labourers had filed membership evidence on behalf of three of the five persons the employer had listed as being employees in the bargaining unit. Each piece of membership evidence was dated and bears the name and what appears to be the signature of an individual who was on the list of employees filed by the responding party. All three pieces of membership evidence also bear the signature of a witness, who is also the person who signed both the declaration verifying the membership evidence and the statement referred to in paragraph 10 of the November 7th decision. Both the statement and declaration state that the membership documents were signed by the employees indicated on the documents.

8. Although section 128.1(4) of the Act provides that the Board shall determine the percentage of employees who are members of the trade union on the basis of the information

provided in or with the application for certification and the information filed by the responding party, section 128.1(5) states:

> Nothing in subsection (4) prevents the Board from considering evidence and submissions relating to any allegation that section 70, 72 or 76 has been contravened or that there has been fraud or misrepresentation, if the Board considers it appropriate to consider the evidence and submissions in making a decision under this section.

9. The allegations made by the responding party supported by the affidavit evidence it filed are specific, detailed and quite serious as they raise an issue of fraud or misrepresentation in respect of the membership evidence filed by the Labourers. Under these circumstances, the Board considers it appropriate to consider the evidence filed by the responding party in this application for certification under section 128.1 of the Act.

10. The Board therefore refers this request for reconsideration to the Registrar to be listed for one day of hearing for the purpose of hearing the evidence and representations of the parties with respect to the responding party's allegations relating to the membership evidence filed by the Labourers.

11. While this panel of the Board is not seized with this matter, the Registrar is requested to schedule this matter for hearing before this panel of the Board if it is convenient to do so.

2988-05-ES Grand & Toy Limited, Applicant v. Director of Employment Standards, Responding Parties.

Employment Standards – Grand & Toy challenged an order requiring it to amend its vacation pay policy that provided one annual lump sum payment of vacation pay to employees on a fixed date – The Act requires that employees be given two weeks vacation after the completion of an entitlement year and that a lump sum payment of accrued vacation pay be made prior to the employee's commencement of the vacation – The Board found such a fixed payment did not violate the Act and in some instances could even be construed as a greater right or benefit – Compliance Order rescinded

BEFORE: Corinne F. Murray, Vice-Chair.

APPEARANCES: *Brett Christen, Janet Ashfield* and *Chris Bell* appeared for the applicant; *Judy L. Chan* appeared for the Director of Employment Standards.

DECISION OF THE BOARD; November 21, 2006

Introduction

1. The applicant seeks rescission of two parts of a three part Order, issued November 2, 2005, directing the applicant to cease paying out accrued vacation in June of each year to its part-time employees until a proper written agreement is made with those employees or, if no such

agreements are concluded by a specified date in December, 2005, comply, thereafter, with section 36(1) of the Act with respect to the timing of the those payments.

2. The issue of whether the timing of vacation payment to its part-time employees is in conformity with the *Employment Standards Act, 2000* (the "Act") is not new to Grand & Toy's operations. In a prior decision of the Board, differently constituted, rescinding an Order to Comply issued in April of 2005, Grand &Toy's practice of paying its part-time employees' accrued vacation pay in the first week of April following the end of its established vacation entitlement year on March 31st was determined to be conformity with the requirement of section 36(1) of the Act.

3. The conclusion of the Board (see unreported decision dated November 16, 2005 in Board File No. 0016-05-ES) was that payment in April of each year was "before" most routine vacations. The Order issued in that case was wrong to the extent that section 36(1) of the Act had been interpreted to require payment to be made "when vacation is taken". Alternatively, the Board found the template agreement signed by part-time employees establishing this timing of payment need not be a stand alone agreement and thus was in conformity with section 36(4) of the Act. This decision was rendered without the participation of the Director of Employment Standards ("DES").

4. The Order under review in the current application was issued just prior to the release of that decision and consequently rests in part on a similar conclusion that subsection 36(1) of the Act requires payment of vacation pay "at the commencement of" taking vacation.

5. The main factual difference between the Board's prior determination and the facts before me is that the signed agreement under consideration provides for the annual vacation payment in the first week of June, not April, for the same vacation entitlement year (April 1-March 31). The Employment Standards Officer ("ESO") concluded, without knowledge of the Board's decision, that Grand & Toy had failed to enter into a "valid" agreement with a particular part-time employee, Damien Van Vroenhoven ("Van Vroenhoven"), and all others like him, for their accrued vacation to be paid in June.

6. There are no facts in dispute. The ESO who issued the Order gave evidence pertaining to the facts and documents gathered in the course of the audit of a Grand & Toy store in Richmond Hill in October of 2005 that convinced him that it should issue. Chris Bell ("Bell"), the store manager, was in attendance at the hearing but did not testify. Janet Ashfield, who has national responsibility for Grand & Toy's human resources function, gave evidence that confirmed Grand & Toy's long-standing practice of paying out accrued vacation pay to its full-time and part-tine employees at the end of the first full pay period following March 31st, the end of its fiscal and vacation year.

The Order under Review

7. Although the contested part of the Order are the same, the basis for each is different:

> After interviewing Chris Bell, Manager, and reviewing Damien Van Vroenhoven's employment records it was determined there was no written agreement as required by Section 1(3) of the said Act in reference to the

> issue of an employee agreeing that the employer may pay vacation pay at a time agreed by the employee.
>
> By way of this Order the employer is required to:
> - cease paying vacation pay in June each year, until such time as the employer has obtained written agreement from an employee, and
> - where no such agreement is achieved comply with Section 36(1) of the said Act; and
> - do so before December 2, 2005.
>
> ……
>
> After interviewing Chris Bell and reviewing payroll and employee records for the period April 1, 2005 to September 30, 2005, it has been determined Damien Van Vroenhoven did not agree in writing to have vacation pay paid at a time other than at the commencement of his vacation in accordance with Section 36(1) of the Act.
>
> By way of this Order the employer is require to:
> - cease paying vacation pay in June each year, until such time as the employer has obtained written agreement from an employee; and
> - where no such agreement is achieved comply with Section 36(1) of the said Act; and
> - do so before December 5, 2005.

8. The remaining part of the Order not under review requires that vacation time be provided to part-time employees because discussions with Bell and review of employment records of Van Vroenhoven and another part-time employee at the store showed that Grand & Toy had failed to comply with paragraphs 1 and 2 in Section 35.

Issues

9. The issue is whether the written agreement between Grand & Toy and Van Vroenhoven, a part-time employee, establishes a different time for payment of his vacation pay than that required by subsection 36(1) of the Act and if so, whether it is an enforceable written agreement within the meaning of subsections 1(3) and 36(4) of the Act.

Facts

10. The facts disclosed that Van Vroenhoven had signed an "Agreement of Main Terms and Conditions of Employment" on or about August 12, 2003, the outset of his employment. One of the paragraphs dealt with "Vacations" as follows:

> 4. Per our current policy, the vacation year runs from April 1 to March 31. You are eligible for vacation based on 4% of your gross earnings accumulated during the previous vacation period. Part-time associates will receive vacation pay as a lump sum payment usually in the first week of June each year. Further adjustments to this benefit will be in accordance with Grand & Toy's Vacation Policy.

11. After his site visit was concluded but before the issuance of the Order, the ESO received payroll records indicating that Van Vroenhoven was paid his accrued vacation entitlement for the vacation entitlement year ending March 31, 2005 on April 29, 2005, not in the first week of June, as the agreement provided. There was no evidence as to when, if ever, he took his entitlement to vacation time off. The payroll record shows that the payment on April 29th was in conjunction with the pay period ending April 22, 2005.

12. Grand & Toy also provided the ESO with a blank template for the employment contract part-time employees were expected to sign that provided for payment of vacation entitlement in April. The paragraph dealing with "Vacations" is essentially the same as the paragraph in Van Vroenhoven's contract but provided for a payment in the first week of April. It stated the following respecting "Vacation":

> The vacation year runs from April 1 to March 31. Part-time associates will receive vacation pay as a lump sum payment usually in the first week of April each year. You are eligible for vacation pay based on [4%] of your gross earnings accumulated during that previous G&T vacation year. Further adjustments to vacation pay will be in accordance with Grand & Toy's Vacation Policy.

13. According to Ashfield, it has been Grand & Toy's "practice" since at least 2002 to pay vacation pay accrued during the established vacation entitlement year ending March 31st by cheque issued for the "first full pay period" in April. No direct evidence was produced to show that Van Vroenhoven received his vacation payment in April of 2004 instead of June of that year in accordance with his written agreement. I am prepared to assume he did.

14. The ESO issued the Order based upon his assessment of the agreement Van Vroenhoven signed together with separate discussions he had had with him and Bell as to how this agreement came to be signed. The concern of the ESO was that the agreement signed by Van Vroenhoven, if representative of other such agreements, did not measure up to the standards expected under the Act in two ways. Firstly, on the face of the document there was nothing to indicate to Van Vroenhoven that his agreement to the June payment was based upon any awareness that he was accepting something different than his "entitlement under the Act". Secondly, the agreement did not indicate that he could revoke the vacation arrangement at any time.

15. Although the final paragraph ("Representation") of the agreement states an acknowledgment of having "read, considered and understood" the agreement and of having had an opportunity to obtain "legal consultation and advice" with respect to its terms and conditions prior to "freely and voluntarily" signing it, ("Policy Manual") the ESO did not consider this to be enough to address the issues of "informed consent" and "revocability" as contemplated by the Act and the Policy & Interpretation Manual 2005 ("Policy Manual") used by the Employment Standards Branch.

16. During his interview with the manager, the ESO asked whether there had been any discussion with Van Vroenhoven or other employees about what entitlements under section 36 they were giving up by signing the agreement. He did not indicate there was any such discussion. The ESO testified that he told the manager that this sort of discussion was considered by the

Employment Standards Branch to be particularly necessary with part-timers who are often students and otherwise more vulnerable to employer's contraventions.

17. Finally the ESO did not, at any time, receive the Notice of Compliance Form completed by Grand & Toy, which would have indicated "compliance" with the Order. If this had been received, the ESO would have accepted it at face value. In its absence, he assumed there was no compliance and enforcement would be necessary to ensure that either proper agreements were in place or if not, a direction be made that payments pursuant to these agreements cease.

18. Under cross-examination, the ESO agreed that the Policy Manual indicated (in section 14.3.3(b)) that an arrangement for payment for vacation to be made on a specified yearly date was permissible as a greater right or benefit and was still the policy in effect at the time of his Order.

Argument

19. Grand & Toy's primary argument highlights that Van Vroenhoven was actually paid his vacation pay in April of 2005 in accordance with Grand & Toy's practice, i.e., the vacation pay accrued by him during the prior vacation entitlement year stated in his signed agreement, was paid out to him almost immediately upon completion of that year. This fact, the practice of Grand & Toy and the Board's decision of November 16, 2005 essentially end this matter because June of 2005 was not the time of payment in any case. There is also no evidence that any part-time employee took vacation prior to receiving vacation pay in April 2005 in violation of subsection 36(1) of the Act. To the contrary, Grand & Toy pays vacation pay at the earliest point after the conclusion of the vacation year during which entitlement has accrued.

20. Grand & Toy makes the alternative argument that the payment of vacation pay in a yearly lump sum gives the employee a greater right or benefit. The agreement signed by Van Vroenhoven accomplishes the very same thing as sanctioned by the Policy Manual in section 14.3.3.(b) by making the payments in June, i.e. a fixed annual payment date:

> "One arrangement which is upheld … as a greater right or benefit, in terms of an alternate method of paying vacation pay, is payment on a specified date yearly (e.g. on June 30th, December 31st etc.), as it will result in *some* vacation monies being paid in advance. This has been held ... not to violate the Act which is not aimed at prohibiting an employer from paying a portion of accrued vacation at an earlier date than the Act requires in an attempt to place all employees on a common vacation year"

21. Finally with respect to "informed consent" and "revocability", Grand & Toy argues that the agreement should, in line with common law principles (e.g. in *Wallace v. Toronto-Dominion Bank*, (1983), 41 O.R. (2d) 161), be taken to manifest the assent of the employee in the absence of fraud, misrepresentation, *non est factum*, mistake or other recognized bases.

22. The DES submits that the ESO was engaged in assessing the situation at a particular Grand & Toy store in Richmond Hill with respect to Van Vroenhoven but considered typical or indicative of other part-time employees in other stores where the same written agreements were in effect. Even though the ESO later received indication that Van Vroenhoven actually been paid

earlier than June, he determined that an Order against all of Grand & Toy in Ontario was necessary to deal with this agreement, as it stands. The manager failed, at the time of the interview or after, to provide information that Grand & Toy in fact paid vacation pay "before" the employee took vacation.

23. The agreement with respect to payment in June of vacation entitlement requires informed consent and knowledge on the employee's part that it is revocable at any time. There was nothing to indicate that part-time employees, like Van Vroenhoven, were advised of their entitlements regarding vacation pay under the Act. The significance of this omission must be put in the following context. Bell did not ensure that part-time employees actually took vacation time off and there is no indication that if an employee had taken vacation earlier than June, that the employee could have received payment at an earlier time than provided in the agreement.

24. The DES emphasizes that the validity of agreement under subsection 1(3) and subsection 36(4) of the Act turns upon the employee "knowing the consequences" of "giving up rights" under the Act. If the agreement does not clearly identify what the employee is giving up and no "fact sheet of rights" is provided at the time of signing, it is reasonable for an ESO to conclude that there was no "informed consent". The DES also referred to two judicial decisions (*Lukowski* v. *Hatch Associates Ltd.*, [1996] O.J. No. 4246; appeal dismissed, [1998] O.J. No. 5345 and *O'Shaughnessey* v. *Drake International Inc.*, [1986] O.J. No. 793) relied upon in section 4 of the Policy Manual in support of the proposition that employees can realistically end up signing agreements in circumstances where there is no understanding of the consequences, that these omissions can constitute an absence of informed consent.

25. The "Representation" paragraph in the template agreement is not sufficient to take away the concerns of the ESO about the part-time employees "knowing" the consequences of signing the type of agreement signed by Van Vroenhoven. Similarly, the absence of the power to revoke the agreement with respect to payment for vacation, apart from the rest of the agreement, also made the agreement fail the test contemplated by subsection 1(3) of the Act. The DES asserts that employees have the right to revoke their agreement to alternate vacation pay arrangements under section 36 at any time but nothing in the agreement tells them this, not only with respect to timing of the payment but also the establishment of the alternate vacation year.

Analysis

26. The Act requires that that employees be given a vacation of two weeks "after each entitlement year" completed (see Section 33) and that a lump sum payment of accrued vacation pay be made "before" the employee commences his or her time off for this purpose (see Subsection 36(1)). The Act contemplates that a "vacation entitlement year" is individual, commencing on the employee's hire date unless the employer establishes an "alternate" vacation entitlement year. The acceptability of an alternate vacation entitlement year for employees under the Act, as well as the establishment of a fixed date for the annual lump sum payment for vacation accrued during that entitlement year, must be based upon the assumption that these times for the payment of vacation do not depart from the standard set in subsection 36(1) of the Act for vacation payment, i.e. "before" the vacation is taken. It is only if that assumption is not fulfilled in the actual choices made by an employer that the employer is obliged to obtain the agreement of the employees pursuant to subsection 36(4) of the Act.

27. Section 36 provides as follows:

> **36.** (1) Subject to subsections (2) to (4), the employer shall pay vacation pay to the employee in a lump sum before the employee commences his or her vacation.
>
> (2) If the employer pays the employee his or her wages in accordance with subsection 11 (4) or the employee does not take his or her vacation in complete weeks, the employer may pay the employee his or her vacation pay on or before the pay day for the period in which the vacation falls.
>
> (3) The employer may pay the employee vacation pay that accrues during a pay period on the pay day for that period if the employee agrees that it may be paid in that manner and,
>
> (a) the statement of wages provided for that period under subsection 12 (1) sets out, in addition to the information required by that subsection, the amount of vacation pay that is being paid separately from the amount of other wages that is being paid; or
>
> (b) a separate statement setting out the amount of vacation pay that is being paid is provided to the employee at the same time that the statement of wages is provided under subsection 12 (1).
>
> (4) The employer may pay the employee vacation pay at a time agreed to by the employee.

28. Paragraph 12 of the Board's decision dated November 16, 2006 indicates that payment by Grant & Toy in April conforms with that timing under subsection 36(1) of the Act:

> The only requirement that subsection 36(1) of the Act imposes is that accrued vacation pay must be paid out *before* vacation is taken, not "when the vacation is taken" (the language in the Order rescinded by the Board) and equally not "at the commencement" of vacation (the language of the part of the Order under review). Since no contravention of Section 36 of the Act has occurred, there is consequently no reason to uphold either of the portions of the Order to Comply under review.

It is clear that Grand & Toy's payment to Van Vroenhoven in April is also not a violation of subsection 36(1) of the Act for the reasons articulated in the Board's decision of November 16, 2005.

29. The DES's arguments are based upon June not being a permissible time for payment of such lump sums as envisioned by subsection 36(1) of the Act. I do not think that there is any distinction between April or June as payment dates. Section 14.3.3(b) of the Policy Manual properly regards the establishment of a fixed annual lump sum payment of vacation not to be at variance with the Act because such a payment process bestows a greater right or benefit.

30. This view is not inherently flawed when one applies it to Van Vroenhoven's situation as an example. His hire date was August of 2003 and he would be paid his accrued vacation in June of 2004, a minimum of about two months earlier than required if no alternate vacation year had been established or in March of 2005, 10 months after his anniversary of his hiring. The establishment of an alternate vacation year only changes the outside limit for the timing of vacation, pursuant to section 35.1, to be June of 2004, the very month established in the agreement for the 1st payment of his vacation pay entitlement accrued.

31. I find no reason to disagree with the interpretation of subsection 36(1) of the Act in the November 16, 2005 decision. All that subsection requires is payment in the time period "before" vacation commences. However, the reasoning that formed the foundation for the Board's conclusion that the payment date of April did not violate section 36(1) of the Act is not the only basis upon which that payment can be found to be in conformity with that subsection 36(1). It can also be upheld because it is a greater right or benefit consistent with section 14.3.3(b) of the Policy Manual. This is no less applicable to other fixed payment dates, including a week in June.

32. Since I am unable to conclude that the fixed payment date in the first week of June is a "take-away" or delivers a lesser right or benefit any more than a payment in April would be, the issues of whether the agreement has been entered with informed consent and information on its revocability are moot. Paragraph 4 of the agreement is merely to inform the employee since there is no need for that employee's agreement, to either the establishment of alternate vacation year or to the fixed date of the annual, lump sum payment of vacation accrued.

33. Consequently I am not prepared in these circumstances to conclude that any agreement is necessary, under the Act, for Grand & Toy to fix a date in June for the annual lump sum payment of accrued vacation.

Disposition

34. For all of the above reasons, the following part of Order to Comply No. 22717 is rescinded:

> By way of this Order the employer is required to:
> - cease paying vacation pay in June each year, until such time as the employer has obtained written agreement from an employee, and
> - where no such agreement is achieved comply with Section 36(1) of the said Act; and
> - do so before December 2, 2005.

0897-05-ES; 0898-05-ES; 0899-05-ES; 0900-05-ES Rostrust Investments Inc./Investissements Rostrust Inc., Applicants v. Terry Dostater; Marc Plouffe; Raymond Conlon; Daryl Hargrove and Director of Employment Standards, Responding Parties

Discharge – Employment Standards – Rostrust Investments Inc. asked the Board to review four orders to pay in relation to the termination of four employees – The applicant owned a building complex and leased it to Public Works and Government Services Canada (PWGSC) – Pursuant to a contract, the applicant provided management, cleaning and maintenance services to the leased space where the employees worked – PWGSC terminated this contract and decided to provide these services directly – As a result, the applicant terminated the four employment contracts – Each respondent commenced employment with PWGSC – The applicant employer claimed five grounds to be relieved of its duty to pay termination pay: a) the respondents were given notice, b) the respondents resigned by accepting jobs with PWGSC, c) the applicant fell within the purview of Section 10 of the Act as they were a "building services provider", d) there was a sale of business, and e) termination pay would constitute a windfall as they respondents suffered no damages – The Board determined that the "sale of business" and "building service provider" provisions of the Act do not apply when the purchaser or new provider is subject to federal labour jurisdiction – Orders to Pay upheld – Applications dismissed

BEFORE: *Ian Anderson*, Vice-Chair.

APPEARANCES: *Peter Mantas* appeared for the applicant; *Terry Doxtater, Marc Plouffe, Raymond Conlon* and *Daryl Hargrove* appeared for themselves; no one appeared for the Director of Employment Standards.

DECISION OF THE BOARD: December 1, 2006

1. These are four employer applications for review under section 116 of the *Employment Standards Act, 2000*. The facts giving rise to each application are the same, and accordingly they were heard together. Rostrust Investments Inc. ("Rostrust") seeks to have orders to pay termination pay to each of the responding employees (collectively, the "respondents") set aside.

2. There is no dispute that each of the respondents was employed by Rostrust to provide certain services in relation to a building leased by the federal government, that the employment of the respondents with Rostrust ended on February 29, 2004, and that each of the respondents immediately commenced employment with the federal government performing essentially the same functions as they had performed for Rostrust. Rostrust argues that the respondents are not entitled to termination pay on the basis of a number of alternative positions. It argues:

> a. That it gave each of the respondents written notice of termination on November 5, 2003, and thereby fulfilled any obligation it had under the Act.
>
> b. That each of the respondents resigned their employment with Rostrust prior to February 29, 2004, by unconditionally accepting employment with the federal government.
>
> c. That Rostrust was a "building services provider" within the meaning of the Act, and as such was replaced by the federal government, with the result that the respondents right to recover termination pay as against Rostrust is taken away by section 10 of the Act.

> d. That there was a "sale of a business" within the meaning of the Act from Rostrust to the federal government, and since the federal government employed the respondents, their right to recover termination pay as against Rostrust is taken away by section 9 of the Act.
>
> e. That an award of termination pay would constitute a windfall to each of the respondents, and ought not therefore be awarded, since each of the respondents immediately commenced employment with the federal government.

3. If termination pay is owing, Rostrust does not dispute the amounts set out in the orders to pay.

Facts

4. Other than as noted, the facts are not in dispute. Certain facts were agreed to and each of the respondents testified. Rostrust cross examined the respondents with respect to their evidence, but led no evidence to contradict them.

5. Rostrust owns a building complex in Ottawa known as L'Esplanade Laurier comprised of two office towers and a retail complex. It took over the building complex in 1996. Pursuant to a long-term lease, Public Works and Government Services Canada ("PWGSC") occupies all of the two office towers. Pursuant to a separate Management Agreement, Rostrust was required to provide management, cleaning and maintenance services to manage and maintain the space leased by PWGSC.

6. Each of the respondents was involved in providing these services in a manner which I will describe in greater detail below. Conlon had been employed in the building since 1971, Hargrove since 1979, and Doxtater since 1986. That is, all of them had been employed in the building providing similar services prior to 1996 when Rostrust took over the building complex. Plouffe was employed in the building complex, and by Rostrust, since 2002.

7. By letter dated November 4, 2003, PWGSC advised Rostrust that it would be terminating the services provided by Rostrust pursuant to the Management Agreement effective February 29, 2004. It also advised Rostrust that it would be taking over the provision of those services directly as of March 1, 2004.

8. On November 5, 2003, Rostrust convened a meeting of its staff at the building complex to advise them of PWGSC's letter. Employees were given a copy of a memo which reads as follows:

> Rostrust Investments Inc.
>
> To: ALL ROSTRUST INVESTMENTS INC. STAFF
>
> Please be advised that PWGSC has sent us a letter in which they have informed us of their desire to manage Esplanade Laurier except for the M1, M2 and garage levels.

> We are reviewing this letter in light of the interests of our employees and financial impact on Rostrust Investments Inc. and the Rosdev Group in general. We have not accepted the PWGSC position.
>
> I would ask you to not let this event interfere with your work. We shall continue to operate under the principle of "business as usual." I would also ask you to direct any questions respecting in this matter directly to me or in my absence, Avrum Miller or Michael Rosenberg.
>
> I would also ask you to please ensure that all documentation and other matters be kept confidential in keeping with our practice.
>
> Thank you for your cooperation. I will keep you informed of matters on a regular basis.
>
> Michael Swan
> General Manager, L'Esplanade Laurier
> Rostrust Investments Inc.

9. The evidence of the respondents is that the general tenor of Rostrust's position at the meeting was very positive: they were told that Rostrust was going to contest PWGSC's right to terminate Rostrust's contract to provide the services and it expected to win. The respondents' evidence is also that there was no mention of termination of employment at the meeting.

10. The evidence of the respondents is that while there were periodic subsequent discussions with their superiors at Rostrust as to the status of the situation, Rostrust was consistently positive about its prospects of winning its dispute with PWGSC. One of the respondents, Plouffe, agreed, however, that within the next two weeks, the General Manager had suggested to him that he take steps to protect himself.

11. On November 20, 2003, each of the respondents submitted an application for employment to the Public Service of Canada. Each of the applications in some way indicates that the respondent is applying for a position with PWGSC at the L'Esplanade Laurier Complex. The respondents in their evidence confirm that a property manager who worked for PWGSC had in effect encouraged them to apply to PWGSC to continue in the positions they held with Rostrust. Each of the respondents testified that he decided to do so against the contingency that Rostrust would not be successful in its dispute with PWGSC.

12. On February 4 and 11, 2004, PWGSC made offers of employment to the respondents. Three of the offers were effective March 1, 2004. One of the respondents was unable to work due to knee surgery and for this reason his offer was amended by hand to strike out March 1, 2004 as the effective date and substitute March 15, 2004. Each of the respondents accepted his offer by signing it back on February 18, 20 or 23, 2004 as the case may be. The letters of offer and acceptance were unconditional.

13. Each of the respondents testified that had Rostrust been successful in its dispute with PWGSC he would have continued to work for Rostrust.

14. The respondents understand that Rostrust lost some court proceeding with respect to its position that PWGSC could not terminate its contract to provide services by decision released

on February 27, 2004. In any event, on February 27, 2004, Rostrust gave each of the respondents a personally addressed letter. The text of each letter is identical and reads as follows:

> This is to advise you that as a result of the decision of the federal government to take over the services being provided by Rostrust Investments Inc. at Esplanade Laurier, we have no other choice but to terminate your employment effective midnight on February 29, 2004. We vigorously tried to negotiate a different outcome but the federal government for its own reasons insisted that this was their preferred course of action.
>
> May I take this time to thank you for your efforts and loyalty over the past years. I wish you every success in your future endeavors.
>
> Over the next week or so, we will close your employment file and inform you of the results.

15. The evidence of the respondents is that this was the first that they were told by Rostrust that their employment was to be terminated.

16. Each of the respondents commenced employment with PWGSC in accordance with their offers of employment, continuing to perform their duties at the L'Esplanade Laurier complex. Each of the respondents testified about loss of authority, status, salary, benefits or other perquisites compared to those they enjoyed at Rostrust. In addition, none of them were given credit by PWGSC for their service with Rostrust. Two of the respondents, Plouffe and Hargrove, have since left the PWGSC and now perform similar work at another building in Ottawa for a private sector employer.

17. At the time of the termination of his employment with Rostrust, Doxtater was the Building Superintendent. As such he was responsible for maintenance of the buildings and responding to tenant complaints by ensuring that the necessary repairs were done. He supervised a staff of eight. Within the context of these buildings, "maintenance" refers to maintaining the mechanical, electrical, plumbing and ventilation systems of the building, but not cleaning.

18. Hargrove was the Assistant Building Superintendent, reporting to Doxtater. He coordinated maintenance, repairs and operation of the building and assisted with contract negotiations. He supervised and coordinated 9 or 10 staff.

19. Conlon was responsible for heavy-duty maintenance. Specifically he had responsibility for the exterior of the building, marble repairs, interior repairs and tenant "fit-ups" (i.e. modifications for tenants).

20. Plouffe was the Assistant Building Manager. Unlike the others, his responsibilities did not relate to what was considered the maintenance of the building. Rather he was responsible for assisting the Building Manager with different leases and tenants and for managing the security and cleaning contracts. His role with respect to managing the cleaning contract was to assess the level of cleanliness, schedule the cleaning, arrange for extra cleaning at the request of tenants and to deal with invoices for the same. He did not have a role in supervising the cleaning staff themselves.

Analysis

21. I will address each of Rostrust's arguments in turn.

Did the November 5, 2003, memo constitute written notice of termination?

22. Section 54 of the Act provides that no employer shall terminate the employment of an employee who has been continuously employed for three months or more unless the employer provides "written notice of termination" in accordance with section 57 or 58, or complies with section 61 (payment in lieu of notice). At issue in this case is notice of termination in accordance with section 57.

23. Rostrust argues that the respondents received notice and it was in writing. It notes that the Act does not specify the form of notice. It argues that the requirements of the Act are satisfied if the notice given was sufficient for the affected employees to understand that they were being terminated. It argues that the actions of each of the respondents in applying for employment with PWSGC in November 2003 and accepting such employment in February 2004 establishes that the notice was sufficient. Each of the respondents, it argues, understood that their employment with Rostrust was going to be terminated and took steps to obtain alternative employment as a result.

24. I do not accept this argument for two reasons. First, while the Act does not specify the form of written notice of termination to be provided, it does provide that notice of termination be in writing. While the document need not use the word "termination", there must be words which convey that meaning, otherwise the express statutory requirement for written notice would be rendered meaningless. In this case, the November 5, 2003 memo indicates that PWGSC has advised Rostrust of "their desire to manage Esplande Laurier", that Rostrust has "not accepted the PWGSC position" and that Rostrust intends to "continue to operate under the principle of "business as usual"". There is nothing about the November 5, 2003 document which can be construed as giving notice of termination.

25. Secondly, assuming without deciding that recourse may be had to extrinsic evidence for the purposes of interpreting the November 5, 2003 document, in my view the evidence does not support the proposition that the respondents understood the document as being written notice of termination. Each of the respondents applied for a job with PWSGC to protect themselves against the contingency that, notwithstanding its position, Rostrust's contract to continue to provide the services in question would come to an end as of February 29, 2004. They did so not because of anything that Rostrust told them, but despite the assurances given to them by Rostrust. The fact that the respondents took prudent steps to protect themselves against the possibility of loss of employment does not, therefore, provide a basis for concluding that the respondents understood the November 5, 2003 document as notice of termination.

By unconditionally accepting employment with PWSGC did the respondents resign their employment?

26. As noted, on February 27, 2004, Rostrust ultimately gave the respondents written notice of termination effective February 29, 2004. Earlier in February 2004, however, each of the respondents had unconditionally accepted employment with PWGSC effective March 1, 2004.

Rostrust argues that in doing so each of the respondents effectively resigned his employment with Rostrust.

27. I do not accept this argument. An employee is always entitled to quit his or her employment. A resignation effective a future date does not constitute resignation prior to that date, nor is it inconsistent with ongoing employment with the current employer until that date. Indeed, at common law an employee is required to give an employer reasonable notice of the date on which the employee intends to resign.

Do the "building service provider" provisions of the Act relieve Rostrust from the obligation to pay termination pay?

28. Section 10 of the Act provides as follows:

> **10.** (1) This section applies if the building services provider for a building is replaced by a new provider and an employee of the replaced provider is employed by the new provider.
>
> (2) The employment of the employee shall be deemed not to have been terminated or severed for the purposes of this Act and his or her employment with the replaced provider shall be deemed to have been employment with the new provider for the purpose of any subsequent calculation of the employee's length or period of employment.
>
> (3) Subsection (2) does not apply if the day on which the new provider hires the employee is more than 13 weeks after the earlier of his or her last day of employment with the replaced provider and the day on which the new provider began servicing the premises.
>
> (4) For the purposes of subsection (2), employment with the replaced provider includes any employment attributed to the replaced provider under this section or under a provision of a predecessor Act dealing with building services providers.

29. "Building services" and "building services provider" are defined by section 1(1) of the Act as follows:

> "building services" means services for a building with respect to food, security and cleaning and any prescribed services for a building;
>
> "building services provider" or "provider" means a person who provides building services for a premises and includes the owner or manager of a premises if the owner or manager provides building services for premises the person owns or manages;

30. Section 1 of Ont. Reg. 287/01, prescribes the following as services for a building for the purposes of section 1 of the Act:

> 1. Services that are intended to relate only to the building and its occupants and visitors with respect to:

> i. a parking garage or parking lot, and
> ii. a concession stand
>
> 2. Property management services that are intended to relate only to the building.

31. The services provided by respondents related only to the building. The maintenance and repair services, the management of the security and cleaning contracts, and the tenant relation functions described all fall within the scope of property management services. Accordingly, I find that the respondents were engaged by Rostrust in its function as a building service provider within the meaning of the Act.

32. In adopting this interpretation of the meaning of "property management services" I have been influenced by the fact that, notwithstanding the result if I were to accept Rostrust's argument in this case, application of the building service provisions of the Act is generally to the benefit of affected employees. Thus, I have been mindful of the instruction of the Supreme Court of Canada in *Machtinger v. HOJ Industries Ltd.* [1992] 1 S.C.R. 986, interpreting the predecessor Employment Standards Act, that (at page 1003):

> …. an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not.

33. In this case, however, the "new provider" was PWGSC. Since PWGSC is part of the federal government, it is not subject to provincial labour legislation. Does this inter-jurisdictional transfer have any effect on the rights of the affected employees? While not binding on the Board, as counsel for Rostrust candidly disclosed the policy of the Employment Practices Branch, as set out in its *Policy and Interpretation Manual* at 23.3.4, in such circumstances is as follows:

> The Act only applies to employees and their employers who are provincially regulated, s. 3(2). Therefore, the employee would be considered terminated by the previous provider, which would be responsible for the Part XV (Termination and Severance of Employment) entitlements of the employees.
>
> Similarly, Branch policy is that a transfer from a federal labour jurisdiction employer to a provincial labour jurisdiction employer does not engage section 10 of the Act. That is, there is no recognition of the employee's service with the federal provider for the purposes of calculating service with the new provincial provider.

34. Counsel for Rostrust, however, argues that the effect of an inter-jurisdictional transfer was addressed by Farley J. of the Ontario Court (General Division) on a motion for the determination of a question of law brought by the Director of Employment Standards in *Canada (Attorney-General) v. Standard Trust Co.* (1994) 120 D.L.R. (4th) 522. In that case there was a sale of business from an employer subject to provincial labour jurisdiction to one subject to federal labour jurisdiction. As the Court observed, at common law the sale of the business terminated the employment of the affected employees. The issue was whether section 13(2) of the former Act prevented the termination of employment for the purposes of that Act. Section 13(2) provided as follows:

> Where an employer sells a business to a purchaser who employs an employee of the employer, the employment of the employee shall not be terminated by the sale, and the period of employment of the employee with the employer shall be deemed to have been employment with the purchaser for the purposes of Parts VII, VIII, XI and XIV.

35. Farley J. defined the issue before him as being whether the section should be interpreted in such a way that "purchaser" would be taken to mean only a new employer who would be subject to the provisions of the Act. He answered this question in the negative for, it seems to me, in essence five reasons:

> a. The definition of employer in the Act was broad enough to encompass the new employer;
>
> b. Section 2(2) of the Act provided that it applied to all contracts of employment performed in Ontario;
>
> c. "Employee" was defined by virtue of the person's employment relationship with the employer, and that definition was broad enough to encompass the affected employees;
>
> d. In the absence of a statutory definition, "purchaser" should be given its ordinary meaning; and
>
> e. Thus, section 13 "should be read without adding words to the ordinary meaning of purchaser the meaning of a new employer who is subject to the [Act]".

36. Similarly, it is argued that under the present Act, there is nothing about the definitions of "employer", "employee", "building services", "building services provider", or the operative term "replaced by a new provider" which would restrict the application of section 10 to new providers subject to the terms of the Act. Put another way, to so restrict the application of section 10 would require adding to the term "replaced by a new provider" the words "who is subject to the Act".

37. The difficulty with this argument is that section 2(2) of the former Act has been replaced by section 3 of the current Act. Section 3 does not describe the application of the Act in terms of employment contracts, but rather employment relationships. More significantly, in terms of the issue in this case, section 3(2) of the Act provides:

> This Act does not apply with respect to an employee and his or her employer if their employment relationship is within the legislative jurisdiction of the Parliament of Canada.

That is, section 3(2) supplies restrictive words to section 10(1) of the Act: it does not apply with respect to an employee of the replaced provider employed by a new provider if their employment relationship is within the legislative jurisdiction of the Parliament of Canada. I note that there does not appear to have been an analogous provision in the former Act which was the subject of Farley J.'s decision.

38. Accordingly, I find that the "building service provider" provisions of the Act do not serve to relieve Rostrust from the obligation to pay termination pay.

Do the "sale of a business" provisions of the Act relieve Rostrust from the obligation to pay termination pay?

39. Assuming, without deciding, that there was a sale of a business from Rostrust to PWGSC, for similar reasons I find that the sale of business provisions of the Act do not apply with respect to the sale of a business from one employer to another employer that is within the legislative jurisdiction of the Parliament of Canada.

40. Accordingly, I find that the "sale of a business" provisions of the Act do not serve to relieve Rostrust from the obligation to pay termination pay.

Does the fact that each of the employees immediately commenced alternative employment render the termination pay a windfall which ought not be awarded?

41. Rostrust argues that since each of the employees immediately commenced alternative employment, they experienced no loss. Since the general purpose of damages is to compensate for a loss, it argues that termination pay should not be awarded. An award of termination pay in these circumstances, it argues, would constitute a windfall.

42. I do not accept this argument. It is based on common law principles which do not apply to a claim for termination pay under the Act. As stated by the Board in *John Dickins Broadcast Design Ltd.* [2005] O.E.S.A.D. No. 1320 (December 23, 2005) at paragraph 30:

> A claim under the Act is not a claim at common law. The Act sets out minimum requirements and provides a relatively expeditious means of enforcing those rights. An employee may elect to claim under the Act or to sue at common law, but may not do both. This Board has found that a claim for termination pay is not subject to a requirement to mitigate: see *Jamesway Construction Ltd.* [2005] O.E.S.A.D. No. 842; see also *Plaza Fiberglass Manufacturing Ltd.*, [1990] O.E.S.A.D. No. 168. One reason for this is that the Act, and the Regulations thereto, set out a complete code as to when an employee is, and is not, entitled to termination pay: those provisions do not include an obligation to mitigate. A second reason is that determination of whether or not an employee had mitigated could entail a time consuming factual inquiry: such an inquiry would be inconsistent with one of the purposes of the Act, which is to provide an expeditious mechanism for resolving disputes with respect to minimum entitlements.

43. Further, and in any event, each of the employees did suffer a loss. Since, for the reasons set out above, the building service provider and sale of business provisions of the Act do not apply, each of the employees lost his accrued service upon commencing employment with PWGSC.

Disposition

44. For all of the foregoing reasons, the orders of the employment standards officer that Rostrust pay termination pay to Plouffe, Conlon, Hargrove and Doxtater is affirmed.

45. The order to pay to Plouffe also was with respect to a bonus in the amount of $1,000.00. During the hearing, counsel for Rostrust advised the Board that notwithstanding the fact that Rostrust disagrees with the employment standards officer finding that Plouffe was entitled to the bonus, it had decided not to contest the issue. Accordingly, the order to pay Plouffe a bonus in the amount of $1,000.00 is also affirmed.

0395-06-R International Union of Painters and Allied Trades, Local 1891, Applicant v. The Operative Plasterers' and Cement Masons International Association of the United States and Canada - Local 124, Responding Party v. **R.P. Syntex Walls Systems,** Intervenor.

Bargaining Rights – Construction Industry – Termination – Voluntary Recognition – In this application by the Painters to terminate the Plasterers' bargaining rights under s. 66, Syntex was bound to the Painters' Provincial Collective Agreement (which covered, among others, drywall tapers), when it obtained a subcontract from a general contractor bound to a collective agreement with the Plasterers' requiring that plasterers' work only be subcontracted to companies in contractual relations with that union – After commencing work and employing drywall tapers, Syntex entered into a voluntary recognition agreement with the Plasterers – The Board held that when there are actual persons employed in the bargaining unit, the union must demonstrate that it was entitled to represent those actual employees – Although the Plasterers' could not show they were entitled to represent the employees in the bargaining unit on the applicable date, the Board noted it still had discretion under s. 66 to decide whether to terminate the bargaining rights – The Board, following *Penegal Trim*, found nothing to override the fundamental right of the employees of this particular employer to freely select their own union – The Board declared that the Plasterers' were not, at the time the voluntary recognition agreement was entered into, entitled to represent employees in the bargaining unit set out therein, and that the Plasterers' bargaining rights obtained by voluntary recognition with Syntex were terminated as of the date of the Board's oral decision – Application granted

BEFORE: *Mark J. Lewis*, Vice-Chair, and Board Members *John Tomlinson* and *Alan Haward*.

APPEARANCES: *Bernard Fishbein, Greg Smith, Mehmet Kaya* and *Anthony Guindon* appearing for the applicant; *Craig Morrison* and *Richard Corcoran* appearing for the responding party; *Joseph Liberman, Courtney Campbell* and *Mahmut Errol* appearing for the intervenor.

DECISION OF THE BOARD: December 19, 2006

1. This is an application for the termination of bargaining rights, acquired by way of voluntary recognition, brought under section 66 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act").

2. The applicant is the International Union of Painters and Allied Trades, Local 1891 (the 'Painters' and/or 'Local 1891'). The responding union, whose bargaining rights are at issue, is the Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 124 (the 'Plasterers'' and/or 'Local 124'). The employer which is signatory to the challenged voluntary recognition agreement is R.P. Syntex Wall Systems (the 'company' and/or 'Syntex').

3. At the hearing of this matter held on October 30th, 2006, counsel for the Painters brought a motion requesting that this application seeking to terminate the Plasterers' bargaining rights be granted without necessity of calling evidence as the bargaining rights should not be maintained even assuming that the Plasterers' were able to prove their 'best case' as set out in their pleadings. Therefore, for the purposes of this motion, all of the parties made submissions assuming that all facts, not otherwise agreed to, asserted by the Plasterers' were true.

4. Having heard the submissions of the parties on the motion, the Board was able to reach a conclusion and provided its 'bottom line' decision to the parties orally granting the Painters' application and terminating the Plasterers' bargaining rights. In its oral decision of October 30th, 2006 the Board advised the parties that it would provide reasons for its decision in writing. Those reasons are set out herein.

The Facts Relied Upon For The Motion

5. Syntex is a company, based in Brampton, Ontario, which regularly employs drywall tapers.

6. For a number of years Syntex has been bound to the Painters' Provincial Collective Agreement which covers, amongst others, drywall tapers. As a result Syntex employs members of Local 1891 to perform taping work.

7. In the spring of 2005, Syntex obtained a subcontract for work in Ottawa from an Ottawa based general contractor, Ottawa G.S.B. Construction Co. Ltd. ('Ottawa G.S.B.'). Ottawa G.S.B. is bound to a collective agreement with the Plasterers' that requires that plasterers' work only be subcontracted to companies in contractual relations with that union. The Plasterers' claim, and for the purposes of this motion it was assumed, that drywall taping is not only covered by their collective agreement(s) but that in the Ottawa area this work is overwhelmingly performed by members of Local 124 employed pursuant to those collective agreements.

8. On June 1st, 2005, after its work in Ottawa had commenced, Syntex entered into a voluntary recognition agreement with the Plasterers which established bargaining rights and bound Syntex to the Plasterers' collective agreement(s).

9. Local 1891 was clearly aware of the signing of this voluntary recognition agreement. In fact Mehmet Kaya, a Local 1891 business representative, witnessed the document.

10. All of the parties agreed that, at the time that the voluntary recognition agreement was entered into, Syntex was employing employees that fell directly within the bargaining unit set out in the agreement, namely drywall tapers. These employees were not members of the Plasterers'

but were rather members of the Painters. It was agreed that these employees never actually became members of the Plasterers' although the Plasterers' claimed that remittances had been made for the hours that these employees had worked, on Syntex's first Ottawa job, pursuant to the terms of the relevant Plasterers' collective agreement.

11. The Plasterers' claim that, in June 2005 when the agreement was signed, it was agreed that Syntex's existing compliment of employees (that were members of Local 1891) could continue to work on the Ottawa G.S.B. job but that any additional drywall tapers required for this initial job, and any subsequent jobs in the Ottawa area, would be referred to the job(s) by Local 124. In fact, Syntex never requested that Local 124 supply it with any employees.

12. All parties agree that Local 124 filed grievances concerning subsequent Ottawa area jobs, at least some of which have been referred to arbitration, against both Syntex (OLRB File No. 0402-06-G) and Ottawa G.S.B. (OLRB File No. 1663-06-G). This latter grievance has resulted in Minutes of Settlement dated September 5th, 2006 between the Plasterers' and Ottawa G.S.B., which were filed in this matter, and which have had the effect of removing Syntex from Ottawa G.S.B.'s job sites.

The Applicant's Status and the Timeliness of the Application

13. The Painters status to bring this application as a "trade union representing any employee in the bargaining unit" of the Plasterers' voluntary recognition agreement was not disputed. All of the parties agreed that the Painters' pre-existing collective agreement with Syntex explicitly covered drywall tapers both before and after June 1st, 2005. In addition, the Painters filed with the Board membership evidence on behalf of bargaining unit employees.

14. This application was filed with the Board on May 8th, 2006 and therefore, given that there was no dispute that the challenged voluntary recognition agreement was signed on June 1st, 2005, all of the parties agreed that it had been brought within the one year time period established by section 66(1).

15. While, as noted above, the Plasterers' did not directly challenge the Painters' status to bring this application or claim that it had been filed outside of the one year time period set out in the Act, they did, however, reserve the right to assert that the Board should nevertheless exercise the statutory discretion provided for under section 66(1) and decline to grant the declaration requested because of the Painters' knowledge of the voluntary recognition agreement at the time it was signed and their 'delay' in bringing this application.

The Onus

16. Given that neither the applicant's status nor the timeliness of the application were directly disputed, all parties agreed that section 66(3) clearly placed an onus upon the Plasterers' and Syntex to establish that the Plasterers' were entitled to represent the employees in the bargaining unit at the time that the voluntary recognition agreement was entered into. Syntex took the position that this onus could not be met, and therefore, the task of meeting it fell exclusively upon the Plasterers'.

Entitlement to Represent Employees / Pre-Hire Agreements

17. The fundamental legal position of the Plasterers' was that they were entitled to represent the employees in the bargaining unit on June 1st, 2005, as the voluntary recognition agreement which they had entered into with Syntex constituted a valid and proper 'pre-hire agreement'. Accordingly, all three parties focused their arguments on the Board's decision in *Nicholls-Radtke & Associates Limited*, [1982] OLRB Rep. July 1028 and various cases thereafter that have considered that decision.

18. There is no question that, since its decision in *Nicholls Radtke ,supra*, the Board has consistently held that unions (and particularly those in the construction industry) can legitimately rely upon pre-hire agreements in order to meet the onus imposed upon them by section 66(3) to establish that they were entitled to represent bargaining unit employees when entering into voluntary recognition agreements. The Board's views on pre-hire agreements and voluntary recognition are quite succinctly set out in *Intracorp Developments Ltd.*, [2000] OLRB Rep. Sept./Oct 873 (October 27, 2000), in which Alternate-Chair Cummings states the following at paragraph 16:

> 16. Counsel for Local 183 and Intracorp submitted that the voluntary recognition agreement was a valid pre-hire agreement. While the signing of a voluntary recognition when there are no employees in the bargaining unit is generally considered to constitute unlawful support for the union by the employer, the Board's decision in *Nicholls-Radtke & Associates Limited*, [1982] OLRB Rep. July 1028 and the cases that follow it, have created an exception. The Board recognizes that in the construction industry, unemployed members have already chosen their bargaining agent before they are referred to work. It is, therefore, a bit artificial to suggest that a construction trade union wait until work has started before seeking to secure its bargaining right. Consequently, the Board held that where there are no employees in the bargaining unit at the time that the voluntary recognition agreement is entered into, and the employer has a present or future need to have work performed, and the union has available persons to perform it, the voluntary recognition agreement does not constitute unlawful support for the union, and its validity will be upheld.

19. In this case, however, the bargaining unit was not empty on June 1st, 2005, which, as is readily apparent from the portion of the Board's decision in *Intracorp Developments Ltd., supra*, set out above and the decisions in all of the other cases referred to in this matter, is a fundamental pre-condition if a union is seeking to prove its entitlement to represent bargaining unit employees in the bargaining unit on the basis of a pre-hire agreement. Based on the facts as pleaded by the Plasterers', Syntex was employing drywall tapers, on June 1st, 2005, the date on which the voluntary recognition agreement was signed. Therefore, whatever may have been intended concerning the future supply of workers to Syntex by Local 124, this case does not, and cannot, fall within the "*Nicholls Radtke* exception".

20. For the purposes of this motion the Board must, and did, assume that Local 124 represents the overwhelming majority of drywall tapers in the Ottawa area and refers these members to work on a regular basis. Had it been argued that Syntex was not employing drywall tapers on June 1st, 2005, these would have clearly been relevant considerations in determining if

the Plasterers' were entitled to represent employees in the bargaining unit pursuant to the provisions of section 66 of the Act. However, once it was acknowledged that the bargaining unit was not empty then such "facts" are not relevant. When an employer has existing employees, as Syntex did, it is simply not open for a union to rely upon the "*Nicholls Radtke exception*" and seek to prove its entitlement to represent employees in the bargaining unit with reference to the union preference any of the workers registered with its hiring hall whether or not it actual does, or genuinely intends to, supply those workers to the employer at some future date. Rather, when there are actual persons employed in the bargaining unit, the union must demonstrate that it was entitled to represent those actual employees, of that specific employer, on the specific date that the voluntary recognition agreement was entered into as the right to choose their union is a right which ultimately belongs to those employees.

21. The Plasterers' relied on five decisions of the Board dealing with pre-hire agreements: *Westview Electric Contractors*, [1992] OLRB Rep. Feb 262; *Gisborne Design Services Ltd.*, [1995] OLRB Rep. June 796; *Grant Development Corp.*, [2000] O.L.R.D. No. 531 (March 22, 2000), OLRB File Nos. 1338-93-U, 1339-93-G and 1340-93-R; *Intracorp Developments Ltd.*, [2000] OLRB Rep. Sept./Oct. 873, and; Industrial Trades Group Inc. [2002] OLRB Rep. March/April 217 (April 23, 2002). Of these five cases only *Gisborne, supra*, dealt with a situation where the bargaining unit was not empty and the company actually had bargaining unit employees when the voluntary recognition agreement was signed.

22. In *Gisborne, supra.*, while the union had supplied employees at the request of the employer, its bargaining rights were not upheld on the basis of the "*Nicholls Radtke exception*". Rather, the Board found that the union had demonstrated its entitlement to represent the employees by negotiating a tentative collective agreement which it signed only after it had been ratified by the employees that were actually at work in the bargaining unit. In discussing what evidence might be sufficient to meet the onus under section 66(3) the Board stated:

> 18. Section 61 does not require a trade union to a challenged collective agreement to establish that a majority of the employees in the bargaining unit at the time the agreement was entered into were members of that trade union, either through the kind of membership evidence which is typically submitted by a trade union applying for certification, or otherwise. That is a common, perhaps the most common, way of establishing that the trade union was entitled to represent the employees in the bargaining unit at the time the agreement was entered into, but it is clearly not the only way this can be accomplished (see, for example, cases as far back as *Spring Plastering Limited*, [1967] OLRB Rep. Dec. 887; *Gilbarco Canada Ltd.*, [1971] OLRB Rep. Mar. 155; and see *York County Quality Ltd.*, [1984] OLRB Rep. Sept. 1340). Accordingly, the CLAC's failure to file membership evidence was not fatal to its position in this case.
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> ....
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> 28. I was satisfied on the evidence that it was more probable than not that the ten employees who voted were all of the Gisborne employees on the job site on March 24, 1995, that they all received the information necessary to permit them to make an informed choice, and that they did so in casting their ballots approving the proposed collective agreement. I was also satisfied on the evidence that the group of ten employees was composed of equal or

> approximately equal numbers of persons from Ontario and British Columbia and that, regardless of where they came from, how they came to be at the job site, and whether or not they were members of the CLAC on March 24, 1995, the bargaining unit employees indicated by their majority vote in favour of accepting the proposed collective agreement their willingness to have the CLAC represent them in their employment relations with Gisborne. I was satisfied that the CLAC was therefore entitled to represent the employees in the bargaining unit at the time it entered into the collective agreement with Gisborne, which it did when it signed the agreement after the vote.

23. As is made clear in *Gisborne, supra*, where there are employees in the bargaining unit at the time when a voluntary recognition agreement is entered into, a union can, in the context of a section 66 application, prove its entitlement to represent those employees in a variety of different ways. However, in this case the Plasterers' did not plead any particulars and material facts on which to establish, in any way, that they were entitled to represent the existing employees of Syntex. For instance, the Plasterers', did not claim that the drywall tapers employed by Syntex had, by June 1st, 2005, become, or applied to become, members of Local 124, or that a ratification vote had been held. In fact, based on the pleadings of the Plasterers', it is even impossible to determine when exactly the existing employees were told about the signing of the voluntary recognition agreement. Given the facts pleaded (or more particularly the lack of facts pleaded) by the Plasterers', who bear the onus in this case, it is simply not possible to conclude that the Plasterers' had sufficient (or indeed any) entitlement to represent the employees in the bargaining unit on June 1st, 2005 to meet the requirements of section 66 of the Act, even if all of the facts which they have pleaded are found to be true.

Discretion Under Section 66

24. The inability of the Plasterers' to meet the statutory onus under section 66(3) is not, however, necessarily determinative in this matter. Based on the language of the Act, applications brought under section 66(1) are discretionary. Therefore, it is still open to the Board to dismiss an application brought under section 66(1) and/or to refuse to terminate bargaining rights, even where it cannot be demonstrated that the union was entitled to represent the employees in the bargaining unit at the time that the voluntary recognition agreement was entered into. The discretionary nature of section 66 and the factors the Board should consider in determining whether or not to exercise its discretion were specifically addressed by the Board in *Penegal Trim & Supply Ltd.*, [2000] OLRB Rep. Mar/April 332 April 3, 2000). At paragraph 82 of that decision the then Chair of the Board stated as follows:

> 82 The use of the word "may" in section 66(1) confirms that the Board has a *discretion* whether or not to make a declaration, *even if the requirements for doing so are met*. In this regard, section 66 is similar in structure to section 65 which is also *discretionary*. And, in my view, the exercise of that discretion can be informed by the particular circumstances of the case, and also by labour relations policy considerations. The determination is "contextual", and the Board is entitled to take into account what makes "labour relations sense".

25. However, in this case, even when this contextual determination is made assuming the Plasterers' best case to be true, there is still no basis upon which to uphold their bargaining rights.

Labour Relations Policy Considerations and the General Context

26. The Plasterers' argued that in signing the voluntary recognition agreement with Syntex they did not act in a manner that is in any way unusual within the general context of the construction industry in Ontario. This may well be the case. However, the fact that others have signed agreements in similar circumstances to this is quite simply an insufficient basis for the Board to exercise its discretion so as to preserve the Plasterers' bargaining rights.

27. The Board recognizes that sub-contracting clauses similar to that found within the collective agreement binding upon the Plasterers' and Ottawa G.S.B. are a "fact of life" in the Ontario construction industry. Accordingly, sub-contractors may often want to be in contractual relations with a particular union or unions in order to be able to bid, secure, and ultimately perform work for unionized contractors. Voluntary recognition agreements are a perfectly legitimate way for employers and unions to enter into contractual relations and as such it is perfectly "reasonable" for unions and employers to sign such agreements in circumstances where the employer wants access to 'union work'.

28. The fact that an employer and a union may have had a legitimate reason for entering into a voluntary recognition agreement is not however, at least where there are actual employees at work, determinative of an application under section 66. The commercial interests of an employer in acquiring certain work and a union's legitimate interests in enforcing its subcontracting clauses do not, and cannot, override the fundamental right of the particular employees of a particular employer to freely select their own union. This is not to say that voluntary recognition agreements which are entered into in the shadow of a sub-contracting clause are in anyway improper or indefensible to section 66 challenges. However, where institutional parties wish to enter into such agreements they must consider the interests of the employees and cannot simply assume that their own interests, however legitimate, will trump those of employees. This view was made more than clear by the Board in *Penegal Trim & Supply Ltd., supra,* where it stated the following:

> 42. I do not think that it is necessary to multiply the examples, or to speculate at this point, on the various formulas which might easily or conceivably meet the test of section 66(3). It suffices to say that voluntary recognition is a legally-recognized alternative to certification, and is relatively easy to establish and defend, if the institutional parties keep the potential for challenge in mind when they are initially structuring their relationship. Bargaining rights based on voluntary recognition need not be "fragile" at all - despite the provisions of section 66. However, if the bargaining parties wish to protect their arrangement from attack and preserve the stability and certainty of the collective agreement, they must build a foundation that will survive scrutiny under section 66.
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> ...
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> 136. For the reasons outlined in the earlier decision (see paragraphs 111-127), I do not think that I can give much weight to the "good faith" of the institutional parties in entering into voluntary recognition arrangements, or to the fact that, from their perspective, such arrangements were a sensible way of resolving what might otherwise have been time consuming and expensive

> litigation. The search for a settlement WAS sensible. But there were, and are, more interests at stake than those of the institutional parties. There is also an employee interest - an interest that is expressly recognised by section 66 of the Act, and that, after all, was what the original certification applications were all about (i.e. whether or not the employees wished to be represented by the Carpenters in a collective bargaining relationship with the companies). In reaching their "sensible" accommodation, therefore, the Carpenters and the companies were obliged to carefully factor that interest into the equation, if they wished to secure their objective and make it immune from attack. Good faith, as between themselves, is not a sufficient answer under section 66, where the legislative concern and the statutory onus are both quite explicit.

Discretion in the Particular Context of this Case

29. The Plasterers' argued that the particular factual context of this case, which for the purposes of this motion must be taken as being as set out in their pleadings, should lead the Board to exercise its discretion in favour of upholding their bargaining rights with Syntex. Here again the Board is simply not persuaded that the Plasterers' best case is sufficient to reach such a conclusion.

The Knowledge and Delay of the Painters

30. It was accepted as a fact by all of the parties that the Painters, and specifically Local 1891's representative Mehmet Kaya, had knowledge of the voluntary recognition agreement on the very day it was entered into and that thereafter the Painters waited eleven month to bring this application. However, this is simply not a sufficient basis for the Board to uphold the challenged bargaining rights.

31. The relevant portions of the Plasterers' pleadings concerning this argument are set out in the response at paragraphs 6(h) and (i) and 7(a) which state the following:

> 6. (h) The Applicant, through its representative Mehmet Kaya, was present when the voluntary recognition agreement was executed. Indeed, Mr. Kaya signed as a witness to the voluntary recognition agreement.
>
> (i) The Applicant was therefore aware, over eleven (11) months before bringing the instant application, of all of the circumstances surrounding the signing of the currently impugned voluntary recognition agreement
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> ...
>
> 7.(a) Given the Applicant's knowledge of the voluntary recognition agreement as of June 1, 2005, the Applicant's delay in bringing the instant application ought to preclude the granting of the declaration sought.

32. The Plasterers' allegation is quite simply that the Painters, through their agent Mr. Kaya, knew of the voluntary recognition agreement. It was not, however, alleged that the Painters' were a party to the agreement or that the Painters', admittedly detailed and specific, knowledge of the agreement had made it binding upon them.

33. This was not a situation like that dealt with by the Board in *Grant Development Corp., supra,* where both the voluntary recognition and the necessary factual conditions for a valid pre-hire agreement were set out in minutes of settlement which constituted the settlement of proceeding under the Act pursuant to section 96(7) and which a party to those minutes was subsequently attempting to challenge. It was not alleged that anyone, other than possibly Syntex at the time it signed the agreement, ever accepted that the Plasterers' had the right to represent the existing employees. As noted above, voluntary recognition can be a completely legitimate way for a union to obtain bargaining rights. However, every union must be, or must be deemed to be, aware that such bargaining rights are, in the first year at least, subject to challenge and must govern itself accordingly. In these circumstances, where it is apparent on the face of their own pleadings that the Plasterers' effectively took no steps to ensure that their agreement could survive a challenge under section 66, it is simply not open for the Plasterers' to thereafter argue that the Board should exercise its discretion to dismiss this application simply because the Painters' may have been aware of the fact that the voluntary recognition agreement could not survive a section 66 challenge.

34. Generally the Board will require parties to act with a certain degree of expedition in asserting rights under the Act. However the particular consequences which will result from a delay in so doing must be accessed in the specific context of each case and may, therefore, vary accordingly. In this case it is true that the Painters' could have brought this application in June, 2005 (instead of waiting some eleven months to file it) but, in these particular circumstances, this is not a sufficient basis upon which to preserve the Plasterers' bargaining rights.

35. An "eleven month delay" in bringing certain types of applications under the Act may well be unacceptable or, at the very least, may require some form of explanation from an applicant. However, section 66(1) explicitly contemplates that a challenge to bargaining rights acquired by voluntary recognition may be brought at any time during the first year. Accordingly, given that the Act itself establishes that an application brought eleven month after the signing of the voluntary recognition agreement is timely, some other significant prejudicial factor, or factors, would have to have resulted from any such "delay" for the Board to even consider exercising its discretion to dismiss the application. The mere passage of the eleven month time period is not, in and of itself, enough.

36. In this case the Plasterers' did not assert any prejudice which has arisen as a result of the "delay". Further, it is apparent that no prejudice of the type which might result in the dismissal of this application, could in fact have been asserted in the particular circumstances of this case. An identical "timely" application could have been brought by any of the employees in the bargaining unit at any time prior to May 31st, 2006. Accordingly, since the Plasterers' should have been aware that their bargaining rights were subject to challenge through out the first year of their existence, it would simply not be an appropriate exercise of the Board's discretion to dismiss this application and uphold those bargaining rights simply because it was brought by the Painters' in their own name rather than being pursued by the Painters' in the name of any one of the

bargaining unit members from whom they had collected membership evidence which was filed with the Board as part of this application.

37. On the facts, which they themselves have pleaded, the Plasterers' have not suffered any prejudice. By signing the voluntary recognition agreement they secured, albeit for a limited period of time, bargaining rights with Syntex. By virtue of this application those bargaining rights were only terminated, pursuant to the explicit language of section 66(4) of the Act, as of the Board's decision of October 30th 2006. Nothing in this decision made pursuant to section 66, in any way invalidates the Plasterers' collective agreements for the period prior to October 30th, 2006. Therefore, nothing in this decision prevents Local 124 from pursuing the grievances that it has already filed against Syntex and having them determined, in the normal course, with respect to any work performed prior to October 30th, 2006.

Jurisdiction

38. Finally, the Plasterers' argued that the Board should exercise its discretion to dismiss this application as it is in essence nothing more than an attack by the Painters' on the Plasterers' jurisdiction concerning drywall taping in the Ottawa area. The Board is not persuaded by this argument.

39. For the purposes of this motion the Board accepted that the overwhelming majority of drywall taping in the Ottawa area is performed by members of Local 124. However, as the Board's decision in *Bondfield Construction Co.*, [2006] O.L.R.D. No. 2975 (August 14, 2006), OLRB File No.4095-05-JD, which the Plasterers' relied upon, makes quite clear, work jurisdiction and representational rights are not synonymous. The mere fact that a particular union claims, and/or has established, a particular work jurisdiction does not give it the right to automatically acquire bargaining rights for the employees of any particular employer performing the work in question. Just as the Board found to be the case with the Bricklayers in the Kingston area in *Bondfield, supra*, it may well be that the Plasterers' local area practice concerning drywall taping in and around Ottawa is so overwhelming that such work should be assigned to members of Local 124 rather than to members of the Painters', but any such finding would not and could not establish any bargaining right and/or preserve any bargaining rights which the Plasterers', or any other union for that matter, did not legitimately hold.

Conclusion

40. For all of the reasons set out herein, the Board hereby repeats its oral decision of October 30th, 2006 and declares, pursuant to section 66 of the Act, that the Plasterers' were not, at the time the voluntary recognition agreement was entered into, entitled to represent employees in the bargaining unit set out therein and, as a result, further declares that, as of the date of the Board's decision (October 30th, 2006), all bargaining rights obtained by the Plasterers' by way of its voluntary recognition agreement with Syntex are terminated.

3608-05-U 1647031 Ontario Ltd. o/a **S.L.R. Roofing and Sheet Metal**, Applicant v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America; Robert Shewell; 6221220 Canada Inc. o/a Jim's Roofing and Jim LeBlanc, Responding Parties.

Construction Industry – Duty to Bargain in Good Faith – Standing – Unfair Labour Practice – To secure itself a subcontractor to install cedar shingles, SLR signed a collective agreement with the Carpenters, after having been told by the subcontractor that the Residential Roofing Agreement was standard across the province and included a letter of understanding specifying wage rates for cedar shingling – After the subcontractor abandoned its contract with SLR, and SLR was forced to pay another entity higher rates to complete the work, SLR complained that both the subcontractor and the Carpenters had violated sections 17 and 70 of the Act, because the agreement SLR was given to sign was not in fact standard across the province – The Board held that an employer has no standing to bring a complaint under s. 70, so that element of the application was dismissed – With respect to the duty to bargain in good faith, the Board found that the Carpenters did not hold bargaining rights for the employees at the time that bargaining with SLR took place, so no such duty arose in the circumstances – Application dismissed

BEFORE: *Harry Freedman*, Vice-Chair.

APPEARANCES: *Walter Thornton, Janet Callfas* and *Stephen Luke* for the applicant; *Mike McCreary* and *Denis Theriault* for Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America and Robert Shewell; *Mike McCreary* and *Jim LeBlanc* for 6221220 Canada Inc. o/a Jim's Roofing and Jim LeBlanc.

DECISION OF THE BOARD; November 1, 2006

1. The applicant ("SLR") alleges Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America ("Local 27") and Robert Shewell violated the duty imposed on them by section 17 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, as am. (the "Act") to bargain in good faith with SLR. (Mr. Shewell is a business agent of Local 27 and has some responsibility for the low rise residential roofing collective agreement.) SLR asserts that Jim LeBlanc, the principal of 6221220 Canada Inc. o/a Jim's Roofing acted as an agent of Local 27 in facilitating its violation of the Act. SLR also alleged that the conduct of the responding parties contravened section 70 of the Act.

2. The responding parties moved to have this application dismissed for failing to disclose a *prima facie* case of a violation of the Act. The parties agreed to have the Board deal first with the responding parties' motion, on the understanding that the facts, as pleaded in the application, must be accepted as proved for purposes of the motion. The parties further agreed I should not have regard to the response filed by the responding parties.

3. The relevant facts giving rise to this motion are relatively straightforward. Stephen Luke is the principal of SLR, a roofing and sheet metal contractor operating in the Greater Toronto area. In March, 2005 SLR secured work from Dunpar Homes Inc. ("Dunpar") to supply and install cedar shingles on a number of low rise residential units being built in Etobicoke. Dunpar has no collective bargaining relationship with Local 27. At about that same time, SLR entered into discussions with Mr. LeBlanc through its cedar shingle supplier about becoming SLR's subcontractor for the installation of those cedar shingles. Mr. LeBlanc advised Mr. Luke

that in order to engage him and his company, Jim's Roofing, as a subcontractor to perform the cedar shingling work, SLR would have to sign the Residential Roofing Collective Agreement between the Residential Roofing Contractors Association of Metropolitan Toronto and Local 27 (the "Roofing Agreement"). Mr. LeBlanc also told Mr. Luke that the Roofing Agreement included or covered cedar shingling and was consistently applied to cover that type of work.

4. Mr. Luke, after accepting the representations made by Mr. LeBlanc and at Mr. LeBlanc's suggestion, met with Mr. Shewell, a business representative of Local 27, for the purpose of negotiating a collective agreement covering the cedar shingling work being undertaken at the Dunpar project to be effective between Local 27 and SLR. Mr. Luke went to the meeting expecting that he would be signing the Roofing Agreement or a collective agreement identical to the Roofing Agreement in all material respects. Although Mr. Luke did not convey that expectation to Mr. Shewell, Mr. Shewell, as an experienced business agent in the construction industry, knew or ought to have known that SLR was prepared to accept and be bound by the Roofing Agreement. Mr. Shewell provided Mr. Luke with a collective agreement consisting of the Roofing Agreement and Letter of Understanding No. 6. Mr. Luke understood that cedar shingling work came within the scope of the Roofing Agreement and was consistently applied to cover that work. He also believed that the Roofing Agreement included "Letter of Understanding No. 6" which specifically deals with "cedar rates" or the rates payable for the installation of cedar shingles. SLR does not allege that Mr. Shewell expressly represented those facts to Mr. Luke during the meeting but rather that Mr. Luke assumed, based on his conversations with Mr. LeBlanc, that was the situation when he was presented with a collective agreement that included Letter of Understanding No. 6 and the absence of any indication to the contrary from Mr. Shewell during their meeting.

5. As a result of the discussions with Mr. Shewell at his meeting with Mr. Luke, SLR signed the collective agreement presented by Mr. Shewell which included Letter of Understanding No. 6, as SLR understood that the collective agreement it was signing was identical in all material respects to the Roofing Agreement.

6. SLR asserted that Mr. LeBlanc was acting on behalf of or was an agent of Mr. Shewell and Local 27. During the course of argument before me, SLR conceded that the only factual basis for asserting Mr. LeBlanc was in an agency relationship with Local 27 and Mr. Shewell was his demand that SLR sign a collective agreement with Local 27 before he would accept a subcontract of work from SLR and because Mr. LeBlanc facilitated the meeting between Mr. Luke and Mr. Shewell. It seems to me the allegation in the pleadings that Mr. LeBlanc was an agent of Mr. Shewell and Local 27 is not a factual pleading but rather a legal conclusion. In the absence of more facts to support that legal conclusion, I am not prepared to accept that Mr. LeBlanc was their agent or was acting as their agent for purposes of this motion.

7. It is not clear from the application when Jim's Roofing began working for SLR. According to SLR, Jim's Roofing was initially paid $60.00 per cedar shingle bundle installed. Some time in May 2005, Jim's Roofing demanded an increase in the rate paid for each installed bundle. SLR refused to meet that demand for a higher price per bundle with the result that Jim's Roofing abandoned its contract with SLR. Subsequently, SLR learned that Letter of Understanding No. 6 is not in fact included in any other Local 27 residential roofing agreement and that cedar shingling was not consistently being performed under the Roofing Agreement. In

order to finish the work SLR had contracted with Dunpar to perform, SLR engaged another subcontractor at a higher cost to complete the work Jim's Roofing had earlier agreed to carry out.

8. The Letter of Understanding No. 6 signed by SLR and Local 27 refers to "Cedar Rates". It provides: "The Union, the Contractor and the Crew Leader will meet on a job to job basis in order to negotiate the applicable cedar rates for each individual job." SLR alleged, and for purposes of this motion, I must accept, that Letter of Understanding No. 6 is not found in the Roofing Agreement or in any other collective agreement between Local 27 and the roofing contractors doing low rise residential roofing work.

9. Local 27 submitted that even without Letter of Understanding No. 6, the Roofing Agreement covered the installation of cedar shingles, but accepted, for purposes of its motion, that I could not consider that fact. Counsel for the responding parties took issue with a number of the allegations made by SLR but was prepared to proceed with the motion to dismiss because he asserted that even if all of the facts, as alleged by SLR were both provable and true, there was still no case made out of a violation of the Act.

10. The parties did not spend any time on the appropriate test the Board uses when determining whether to dismiss an application for failing to plead a *prima facie* case as that test is well known. In *Michel Bouchard*, [2005] OLRB Rep. May/June 375 the Board commented on the appropriate approach to take when a responding party moves to have an application dismissed for failing to set out a violation of the Act. The Board wrote at page 377:

> In determining whether the application pleads facts capable of supporting the remedies sought, the Board will accept as true and provable all of the facts as alleged in the application and the applicant's further submissions.
>
> The test is not a particularly stringent one for an applicant.

The Board then cites a long passage from *Corporation of the The County of Brant*, [2000] OLRB Rep. Nov./Dec. 1106 (November 15, 2000) in which the Board, after referring to a number of decisions, relies on the following brief passage from *J. Paiva Foods Ltd.*, [1985] OLRB Rep. May 690 in which the Board wrote at page 691:

> The Board's discretion to dismiss a complaint on the grounds that it does not disclose a *prima facie* case should only be exercised in the clearest of cases, that is, when the Board is satisfied that there is no reasonable likelihood that a violation of the Act can be established on the facts as alleged.

It is with those principles in mind I consider the allegations made by SLR against the responding parties.

11. SLR alleged the responding parties violated sections 17 and 70 of the Act. Those two sections provide:

> 17. The parties shall meet within 15 days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.

> 70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

In order to understand section 17, it is also necessary to consider sections 16, 59(1) and 60 of the Act. Those sections provide:

> 16. Following certification or the voluntary recognition by the employer of the trade union as bargaining agent for the employees in the bargaining unit, the trade union shall give the employer written notice of its desire to bargain with a view to making a collective agreement.
>
> 59(1) Either party to a collective agreement may, within the period of 90 days before the agreement ceases to operate, give notice in writing to the other party of its desire to bargain with a view to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement.
>
> 60. Sections 17 to 36 apply to the bargaining that follows the giving of a notice under section 59.

12. Counsel for the responding parties points out that section 70 of the Act, on its clear wording, prohibits employers from engaging in certain types of conduct in respect of trade unions. He submits that only a trade union affected by the kind of conduct contemplated by section 70 has standing to bring an unfair labour practice complaint alleging a violation of section 70. As SLR does not have standing to bring a complaint alleging a violation of section 70 of the Act, that element of this application must be dismissed. Counsel for SLR did not take issue with the responding parties' submissions in respect of section 70.

13. Counsel for the responding parties is correct. The Board in *Miller Transit Ltd.*, [2004] OLRB Jan./Feb. 115 (January 29, 2004) made the following observation about a complaint brought by an individual relating to an alleged violation of section 70 of the Act by the individual's employer. The Board wrote at page 117:

> The applicant's complaints concerning the Company's alleged breach of sections 70 and 86 of the Act are however ones that can only be brought by the trade union concerned and cannot be brought by an individual employee. As noted in *Board of Governors*, [1991] OLRB Rep. June 734, what is now section 70 of the Act is designed to protect the *institutional rights* of a trade union not the *personal rights* of individual employees. As such a complaint alleging interference with the trade union must be brought by the trade union concerned and not by an individual employee.

See also *Sunworthy Wallcoverings*, unreported, Board File No. 4106-95-U, decision dated June 5, 1996, Q.L. cite [1996] OLRD No. 1947. In *Board of Governors*, [1991] OLRB Rep. June 734 the Board wrote "a complaint alleging interference with the trade union must be brought by the trade union concerned and not an individual employee" and cited *T.I.A. Limousine Operators Association*, [1979] OLRB Rep. Aug. 810 and *Dufferin Aggregates*, [1983] OLRB Rep. July 1031.

14. SLR also alleges the responding parties violated section 17 of the Act in that the misrepresentations of Mr. Shewell and Local 27 violated their duty to bargain in good faith with SLR.

15. The Board has determined that Mr. LeBlanc could not be considered an agent of Local 27 and Mr. Shewell. It is also clear that Mr. LeBlanc and Jim's Roofing have no obligation under section 17 of the Act to deal with SLR in any particular way. Mr. Shewell, as an individual, also owes no duty to bargain in good faith with SLR. If there is a duty to bargain with SLR in good faith in the circumstances set out in this application, that duty is owed only by Local 27, and not by an individual business agent (although I recognize that Local 27 would be liable for any conduct in which Mr. Shewell engaged by reason of section 107(2) of the Act). Moreover, SLR has no standing to claim that section 70 was violated by the conduct of the responding parties or any of them. Under these circumstances this application must be dismissed against all of the responding parties except Local 27.

16. SLR claims that the deliberate insertion of Letter of Understanding No. 6 into the collective agreement Local 27 gave to SLR for its signature was a clear violation of the section 17 duty to act in good faith when engaged in collective bargaining. Local 27 knew that SLR was prepared to sign the same collective agreement as the other roofing contractors had signed. When Local 27 gave SLR the collective agreement to sign it did not alert SLR to the fact that Letter of Understanding No. 6 was not in any other collective agreement. It accepted SLR's signature on that letter and on the collective agreement knowing SLR had assumed the collective agreement it signed was the same in all material respects as the collective agreements signed by the other roofing contractors. SLR seeks, by way of remedy, a declaration that it is no longer bound by the collective agreement and a number of other related remedies.

17. Local 27, the only responding party in this case that could be successfully named as the subject of a complaint alleging a violation of section 17, takes the position that in the unusual circumstances before the Board in this matter, there is no duty to bargain in good faith as between Local 27 and SLR. In the alternative, if such a duty did arise, Local 27 did not violate the Act because SLR was the author its own misfortune. If it chose to rely on its mistaken assumptions without making further enquiries, and in the absence of any express misrepresentations, Local 27 cannot have violated section 17.

18. Local 27 points out that section 17 of the Act is triggered only after notice to bargain is given. A trade union has the right to serve a notice to bargain after either voluntary recognition or certification. Both an employer and trade union have the right to serve notice to bargain within the last 90 days of a collective agreement's term, and such notice is treated as a notice within the meaning of section 17. The duty to bargain in good faith arises, Local 27 argues, only after a notice to bargain has been served or after the parties to a collective agreement have met and bargained or after the trade union which holds bargaining rights for employees of the employer and that particular employer have met and bargained.

19. Section 17 of the Act is quite clear, in that regard, according to Local 27. Section 17 requires parties to "meet within 15 days from the giving of the notice". The "notice" referred to in that section is the notice contemplated by section 16 or section 59. Once the notice is given and the parties meet, section 17 imposes a duty on both parties to "bargain in good faith and make every reasonable effort to make a collective agreement." Thus, the duty to bargain in good faith only arises when parties are obliged to meet by reason of having given or having received a notice to bargain or are otherwise under an obligation to bargain.

20. SLR disagrees with that interpretation of the Act. It contends that once parties meet to engage in collective bargaining, then the duty to bargain in good faith arises. It submits that section 17 of the Act has two distinct parts: an obligation to meet after the giving of notice, and to bargain in good faith upon meeting. Even if the parties are not obliged to meet and bargain, once they do meet to bargain a collective agreement, then the duty to bargain in good faith applies to their bargaining relationship.

21. Some guidance as to the correct interpretation of section 17 may be had by considering section 18(2) of the Act. Section 18(2) provides:

> Despite the failure of a trade union to give written notice under section 16 or the failure of either party to give written notice under sections 59 and 131, where the parties have met and bargained, the Minister, upon the request of either party, may appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

The duty to bargain in good faith does not, in my view, depend on giving notice to bargain. Otherwise, if no notice were given but the parties met and bargained and the Minister appointed a conciliation officer under section 18(2) of the Act, there would be no duty to bargain in good faith applicable to that conciliation process. Thus, it seems to me that the duty to bargain in good faith arises, even in the absence of a notice to bargain, when the parties meet and do engage in collective bargaining.

22. Local 27 points out that section 18(2) applies where there has been a failure to give notice under sections 16 or 59 or 131 (notice to bargain in the construction industry). It submits that there can only be a failure to give notice under those sections of the Act when a trade union already holds bargaining rights for the employees of the employer affected. This case, Local 27 submits, is different since the employer had not given Local 27 voluntary recognition and was meeting with Local 27 to obtain a collective agreement with it for the first time.

23. Local 27 argues that the duty to bargain in good faith imposes a duty on both parties to the bargaining. It submits that SLR was free to have left the meeting with Mr. Shewell if it was not satisfied with the collective agreement Mr. Shewell had provided to Mr. Luke. In the absence of bargaining rights, Local 27 could not force SLR to come back to complete the bargaining. Local 27 submits that the duty to bargain in good faith can only arise where the union party to the collective bargaining holds bargaining rights for employees of the employer party to the bargaining and has the right to compel that employer to engage in collective bargaining.

24. In the alternative, Local 27 argues even if there was a duty to bargain in good faith, there is still no case to meet as SLR is the author of its own misfortune. SLR did not explicitly advise Local 27 of its expectations. When SLR met with Local 27 and sought a collective agreement in respect of the roofing industry, Local 27 complied and included the cedar shingle appendix, as that was the work SLR was performing and for which it wanted a collective agreement. Local 27 submits it was under no obligation to carry out due diligence for SLR. It points out that SLR does not assert that Local 27 explicitly told SLR it was giving SLR the same agreement all of the other roofing contractors had signed. Rather, at most it stayed silent about the content of the collective agreement and let SLR make whatever assumptions it chose to make.

25. In any event, Local 27 argues that Letter of Understanding No. 6 is of little import since all it does is require the parties to negotiate a rate for the installation of cedar shingles. It therefore has no material significance to the collective agreement signed by SLR. SLR approached Local 27 with the intention of signing a collective agreement applicable to the installation of cedar shingles and that is what resulted from its meeting with Local 27.

26. SLR suggests when it signed the collective agreement it was giving voluntary recognition to Local 27. It asserts that the bargaining and the voluntary recognition were all done at the same time in the same transaction, thus triggering the duty to bargain in good faith. It also submits that the silence of Local 27 amounted to a material misrepresentation with respect to the scope of the collective agreement. It claims that in the absence of the cedar shingle letter of understanding, the Roofing Agreement would not cover cedar shingling work. SLR claims that much of the argument made by Local 27 in the alternative is fact specific and would require evidence to sort out what was said and what was understood by the parties during their one bargaining meeting.

27. SLR submitted that the Board has the remedial authority to declare a violation of the Act and to provide a wide range of remedies to counter the violation, including a declaration setting aside the collective agreement.

28. Before determining what remedial response, if any, is appropriate, the Board must consider whether the conduct of Local 27 amounted to a violation of the duty to bargain in good faith. While SLR did not expressly advise Local 27 that it was seeking the same agreement as the other contractors, it alleged Local 27 and Mr. Shewell knew or ought to have known that was SLR's expectation. Remaining silent might, in some circumstances, be seen as a misrepresentation and a breach of the duty to bargain in good faith. See *Westinghouse Canada Ltd.*, [1980] OLRB Rep. April 577; *Stelco Inc. (Hilton Works)*, [2000] OLRB Rep. Sept./Oct. 1029 (October 31, 2000), *Interior Systems Contractors' Association of Ontario*, [1981] OLRB Rep. July 879. Although SLR approached Local 27 to obtain a collective agreement applicable to the cedar shingling work it sub-contracted to Jim's Roofing and in fact secured such a collective agreement, SLR alleges misrepresentation of a material fact and argues that a deliberate misrepresentation by one party in the course of bargaining is the antithesis of acting in good faith. Regardless of my view of the propriety of the parties' conduct, it is necessary first to decide whether SLR and Local 27 were subject to the duty to bargain in good faith imposed by section 17 of the Act. Only if I conclude the duty to bargain in good faith applied to the bargaining between SLR and Local 27 does it become necessary for me to assess whether the conduct of Local 27 violated that duty.

29. I do not accept SLR's assertion that there was a voluntary recognition agreement at some point prior to the execution of the collective agreement so that the difficulty with section 17 of the Act pointed out by Local 27 would disappear. It is apparent that SLR sought out Local 27 for the purpose of entering into a collective agreement so that it could have Jim's Roofing work for it as a subcontractor. It had no right under the Act to demand a collective agreement from Local 27 and neither it nor Local 27 was under any obligation to enter into a collective agreement. It was, it seems to me, always open to SLR to decide not to go with Jim's Roofing, or decide that it need not sign the Local 27 agreement if it was not satisfied with it and "walk away" from the bargaining table. If SLR had done so, Local 27 would not have had any recourse against SLR.

30. Provided the parties are at arm's length and the voluntary recognition agreement does not constitute "employer support" for the trade union (see *Sunrise Paving*, [1972] OLRB Rep. Mar. 199; *C. Strauss (1973) Ltd.*, [1975] OLRB Rep. July 581; *Ontario Hydro*, [1989] OLRB Rep. Feb. 185; *Maxi* [1998] OLRB Rep. July/Aug. 675), there is nothing in the Act that regulates exchanges or negotiations between an employer and a trade union arriving at a voluntary recognition agreement. Employers or trade unions may well make demands or offer concessions in order to secure a voluntary recognition agreement, e.g. the scope of the bargaining unit, that might be problematic if such demands or concessions arose following certification during the negotiation of a collective agreement and were unresolved, thereby leading to an impasse in the bargaining. When parties are negotiating a voluntary recognition agreement or a collective agreement in the absence of bargaining rights there is simply no obligation imposed on the parties under the Act to reach an agreement. In the absence of such an obligation, either party is free to put an end to the bargaining and walk away. The party seeking the agreement, in my view, would have no recourse under the Act to compel the other party to return and resume bargaining.

31. Local 27 did not have bargaining rights for employees of SLR when SLR and Local 27 met and bargained their first collective agreement. Neither party used the procedures under the Act to grant or obtain bargaining rights before that first collective agreement was signed. The Act sets out the methods by which a union obtains bargaining rights and what rights and obligations arise when those methods are adopted. An employer is free to have discussions with a trade union and even attempt to bargain with it over the terms of a first collective agreement, but if that trade union does not hold bargaining rights in respect of that employer, there is nothing in the Act to prevent that employer from walking away from the bargaining. In other words, in the absence of bargaining rights, there is no provision in the Act that would compel an employer to bargain in good faith with a trade union for the purpose of making a collective agreement.

32. In my view, that same principle applies in this case. Assuming the silence of Local 27 misrepresented the content of the collective agreement SLR was about to sign, the remedy, if any, for that misrepresentation cannot be found in section 17 of the Act in the circumstances of this case. SLR called on Local 27 with a view to entering into a collective agreement. Local 27 was prepared to do so, but was under no obligation to negotiate a collective agreement with SLR. Neither party to the bargaining was compelled to engage in bargaining nor were they compelled to reach an agreement as Local 27 did not hold bargaining rights for employees of SLR and SLR had not served a notice to bargain on Local 27.

33. In the result, the facts as alleged by SLR cannot possibly result in the Board finding a violation of section 17 of the Act by Local 27 because the duty to bargain in good faith did not

apply to either SLR or Local 27 when they met, bargained and executed their first collective agreement. I accept that the duty to bargain in good faith created by section 17 of the Act can only apply to parties that have an existing collective bargaining relationship, or where the union holds bargaining rights in respect of the employer at the time collective bargaining for the purpose of reaching a collective agreement takes place.

34. While I cannot find that Local 27 violated section 17 of the Act, this decision does not determine whether the alleged misrepresentations, if proved, may be used as a basis for resisting attempts by Local 27 to enforce the collective agreement. Nothing in this decision prevents SLR from seeking to have the Board in a section 133 proceeding or an arbitrator or board of arbitration in an arbitration proceeding assess the circumstances under which SLR signed the Roofing Agreement together with Letter of Understanding No. 6 in the course of determining whether SLR is bound by that agreement or what obligations, if any, it has under that agreement.

35. In light of my earlier conclusion with respect to the other responding parties at paragraph 15 above and my determination that the facts alleged by SLR cannot result in a finding that Local 27 violated the Act, the motion made by the responding parties to dismiss this application for failing to disclose a *prima facie* case is granted.

36. This application under section 96 of the Act is dismissed.

1453-06-G United Brotherhood of Carpenters and Joiners of America, Local 18, Applicant v. **Strabag Inc.**, Ontario Power Generation Inc. and Electrical Power Systems Construction Association Responding Parties.

Construction Industry Grievance – The Carpenters grieved the denial of access to the construction site of a massive new intake channel being built under the city of Niagara Falls on property owned by Ontario Power Generation – Although it had no members working at the site, the union argued that it needed access to gather evidence for the jurisdictional dispute it had filed – Strabag resisted access, citing health and safety reasons, confidentiality and security – The Board held that since access had been duly negotiated and formed part of the collective agreement between the Carpenters and EPSCA, the employer's categorical denial of access could not be substantiated – The employer was allowed to impose restrictions to access that paralleled those of union representatives with members on site – Grievances against OPG and EPSCA dismissed; grievance against Strabag allowed

BEFORE: *David A. McKee*, Vice-Chair, and Board Members *John Tomlinson* and *A. Haward*.

APPEARANCES: *Denis Ellickson, Jesse Nyman, Konrad Kot, Mich Sinclair, Harlan Bomberry, Randy Cook* and *Norm Agnew* for the applicant; *David L.W. Francis* and *Lloyd Ferguson* for Strabag Inc.; *Helen Daniel* and *Max Jackson* for Ontario Power Generation Inc.; *M. Patrick Moran* and *Max Jackson* for the Electrical Power Systems Construction Association.

DECISION OF THE BOARD: November 9, 2006

Introduction

1. This application is a referral of grievance to arbitration pursuant to section 133 of the *Labour Relations Act, 1995*, S.O. 1995, ch. 1, as amended (the "Act"). This grievance is brought by the United Brotherhood of Carpenters and Joiners of America, Local 18, but similar or identical grievances have been filed by a number of other trades. On the first day of hearing, the parties agreed to adjourn all other grievances and to be bound by the results of the decision in this grievance. The only issue in these grievances is whether, or to the extent to which, these trades should be able to have access to a worksite.

2. The project itself is the construction of a new intake channel from the Niagara River to the Sir Adam Beck Generating Station. That simple description belies the scale and scope of this project. It is, in fact, the largest tunnelling project in the world. The tunnel will transport huge volumes of water from the International Control Weir on the Niagara River, a distance of 10.4 kilometres, travelling under the City of Niagara Falls. The tunnel will be 14.5 metres in diameter (as compared to the 9.5 metres in diameter for the tunnel under the English Channel). The work consists of several stages. First, an initial cut into the bedrock from the surface and downwards to a point well below the surface was made. In that cut, an immense boring machine was assembled to drill out the tunnel. In a word, it is huge. The operating end of the machine is a huge rotary drilling mechanism that will dig out the tunnel. There is much else behind that drilling mechanism. Debris will be conveyed backwards from the face of the cut made by the boring machine by conveyors for removal from the site. The machine was assembled in the initial cut. Once the tunnel is underway, the machine will be out of sight underground. There is also a batch plant built in the cut that supplies concrete to the tunnel, where it is placed to reinforce the walls of the tunnel. Construction is expected to be completed in 2009.

3. The site and easement through which the tunnel will be cut is owned by Ontario Power Generation Inc. ("OPG"), as is the Sir Adam Beck Generating Station. However, OPG has no presence on the site. It has contracted with Strabag Inc. to perform the work and has given Strabag complete control of the site, including the access to it. There is no OPG presence on the site at all. There is also no "EPSCA representative" in the sense of someone who is there exclusively to perform tasks for EPSCA. If EPSCA were required or was asked to appoint a representative, it would choose an employee of Strabag to fill that role.

4. The parties agree that the collective agreement between EPSCA and the Carpenters District Council of Ontario applies to this work, assuming any work should be assigned to members of the Carpenters Union. That is, the tunnel project comes within the ambit of the scope of this collective agreement. Strabag agreed, although only in final argument, that it was bound to this collective agreement on this project.

5. All of the work on the project has been assigned to members of the Labourers International Union of North America and the International Union of Operating Engineers. The Carpenters (and other trades) have all claimed that they should have been assigned some portions of that work. Jurisdictional disputes have been filed that cover virtually all of the work performed on the project (other than, perhaps, some narrowly-defined "construction labourers' work").

6. The Carpenters want access to the site. Although they have no members working on the site who require the services of a business representative, they wish to gather information for the purposes of the jurisdictional dispute, or for any other purpose that is both lawful and appropriate. Since they do not have members working on the site, their only source of information is what a union representative can see.

7. Strabag resists the desire of the Carpenters Union to have access. In its view, the Carpenters have no members who require service, and therefore they have no real interest in viewing the site. They see several problems (discussed below) and see no particular advantage to be gained in permitting access. The Carpenters stated on the first day of hearing that they had been permitted access to the site only once (a few days before) and that they have otherwise been denied access to the site. Lloyd Ferguson, testifying on behalf of Strabag, said that Strabag was prepared to conduct an escorted tour for all business representatives of the Carpenters and all other trades once every two weeks.

The Collective Agreement

8. The relevant portion of the collective agreement is Article 5.1, which reads as follows:

> 5.1 The senior representative of the Union will designate local union representatives as Accredited Union Representatives to handle the day-to-day administration of this Agreement on the basis of not more than two representatives from the Union for each Major Project and a suitable number for the Construction and Services Division. The Union will notify the General Manager of EPSCA, in writing, of the names of such Union representatives, or alternates in the event of illness or unavailability, so that they may be issued identification cards to permit entry to the site. Such representatives, after identifying themselves to the EPSCA representative upon entering the job site, will be free to observe the progress and conduct of the work and to conduct normal union business. The Union undertakes that these representatives will not hinder or interfere in any way with the said work.

This provision grants the Carpenters extensive access rights to any site, including this project. Although I suggested to counsel in argument that the Carpenters were looking for virtually unlimited access, the Union acknowledges that there must be certain restrictions on their access to the site. The Carpenters' position is that their representative is prepared to undergo the same restrictions and limitations as those opposed on any representative of the Labourers or Operating Engineers on the site, but resist any further restrictions, including the requirement that they be escorted.

9. Strabag listed a number of reasons for restricting access in this fashion:

> (1) Health and safety reasons. Strabag is the constructor on the site, and is generally responsible for the safety of everyone on the site. The site is a large one, with many dangerous and hazardous aspects to it.
>
> (2) The boring machine is unique in the world of tunnelling. Strabag asserts a proprietary interest in the manner in which it has been

> assembled and constructed and does not want those secrets to be widely known. One of its rules is that no one on the site is permitted to take photographs.
>
> (3) Strabag is concerned that visiting union representatives will distract employees working on the site, either by seeking information from them, or criticizing them for a lack of skill or a lack of membership in their union. This could result in unsafe conditions and decreased productivity.
>
> (4) Strabag is also responsible for security on the site. Since the work starts at the *International* Control Weir, security involves satisfying the requirements of American authorities, who have an increasingly elevated consciousness about security matters. The tunnel itself will travel under the City of Niagara Falls to a large and important power generating station.

10. These are all legitimate concerns for Strabag that entitle it to place certain restrictions on persons who have access to the site. They are not reasons for refusing access, or for limiting it in the manner in which Strabag proposes.

11. The Carpenters have a right of access to the site that they have negotiated. The union has the right to use that access to further the interests of its members individually and collectively, and to further its own institutional interests. That provision does not represent a balancing of interests in the collective agreement. It is a provision solely for the benefit of the Union. It represents a derogation from the powers that the employer would otherwise enjoy; and it is likely not convenient or of any particular use to the employer to see the Union exercise it. Having concluded an overall bargain that includes this right, the employer may not decide it is now inconvenient.

12. There are inevitably restrictions that can and must be placed on the exercise of that right. However, these restrictions do not relate to the manner or wisdom of the Union's methods in advancing those interests; that is a matter for the trade union to decide. Any necessary restrictions dictated by health and safety concerns or confidentially issues are simply rights or legal requirements that govern the manner in which the rights that the Carpenters have obtained in the collective agreement are to be exercised. As such, they constitute a reasonable limitation on the exercise of those rights.

13. In this case, what is "reasonable" relates to the level of conflict between competing rights and interests of the parties, not what is reasonable in the exercise of the Union's rights under the collective agreement. General statutory law, such as the *Occupational Health and Safety Act*, must be obeyed absolutely. No party may contract out of that Act. Employer interests are not as absolute, but may constitute a reasonable modification or restriction of the manner in which any trade union is entitled to exercise its rights. However, within those constraints, the Union is entitled to further its interests in whatever manner it chooses, without having the wisdom of that exercise or the quantity of effort devoted to it questioned by an employer or by the Board.

14. The four concerns raised by the employer are legitimate, but presumably they apply equally to business representatives from the Labourers and the Operating Engineers. While neither of their collective agreements was in evidence before us, given the nature of EPSCA

agreements, it is unlikely that their rights of access are significantly greater than those of the Carpenters. In that respect, the restrictions on the Carpenters should be no greater than those imposed on the Labourers and Operating Engineers. In addressing each of the four issues raised by Strabag, the following observations seem to us to be self-evident:

> (1) If safety training is necessary before any person obtains access to any area of the site, then the Carpenters' representative would have to undergo that training. If special equipment must be worn, then that applies to the Carpenters' representative as well.
>
> (2) Industrial trade secrets are important matters and must be kept secret. As all of the trades involved in this case are aware, no automobile manufacturer will permit any union to take photographs in an automobile assembly plant for the same reason. That has never unduly hampered any trade union's ability to litigate a jurisdictional dispute that arises in an automobile plant. The same restrictions on the dissemination of information that are imposed on the Labourers and Operating Engineers are equally appropriate for members of the Carpenters.
>
> (3) The fear that a business representative will distract employees who are members of another union is not based on any experience of Strabag. Counsel for the Carpenters agreed that if a member of the Carpenters were to interrupt the work of other employees or to challenge their capacity to perform the work they are doing, that would constitute a hindering or interference with the work in direct violation of Article 5.1, and that exclusion from the site might well be an appropriate response.
>
> (4) The same security measures that are taken with respect to many employees and the business representatives of two other unions may be equally appropriately imposed on the Carpenters' business representative.

15. The other two more general concerns expressed by Strabag are not reasons for limiting access of the Carpenters to the site. Strabag asserts that the Carpenters do not "need" very much access since they do not have members requiring servicing. The amount of time the Union wishes to devote to gathering information for a jurisdictional dispute, or to look for additional and unanticipated work, is a matter for that union to decide. It appears to us that the Carpenters Union would likely have been very interested in being able to attend at the site very frequently during the initial stages of construction to observe what was going on. They were unable to do so at all at that time. Now that the boring machine is underground in the tunnel, on the other hand, we would expect that there would be less interest in visiting the site. However, that is not a decision that we are prepared to make. That is a matter for the Carpenters Union to decide. It is certainly not a matter for Strabag to decide.

16. In addition, Strabag is concerned that access to the site by the Carpenters (and obviously by other trades) will cause it delay and inconvenience. It insists that it must escort all such persons around the site wherever they go. In the absence of a specific health and safety concern, Strabag is certainly entitled to escort persons around the site, but that is a matter for

Strabag to decide. If it wishes to devote those sorts of resources to escorting persons around the site, they may do so. That is a choice for Strabag to make.

17. Some sorts of access will require an escort. Mr. Ferguson testified that no one is permitted in the tunnel on foot. Everyone entering the tunnel must be driven in some form of vehicle operated by Strabag and, for safety reasons, must be accompanied while in the tunnel or on the boring machine. That makes perfect sense to us, assuming that it applies equally to representatives from the Labourers and Operating Engineers. Once again, the Carpenters are seeking only the same sort of access that representatives of those two unions have. Although we have no evidence on the point, it seems likely that a trip to the site on which the boring machine is working is likely available only at specific times to representatives from the Labourers and Operating Engineers. Absent a specific reason for wishing to see a part of the project at another time, the same schedule should be available, with all of its limitations, to a representative from the Carpenters' Union.

18. Whether or not regular tours of a more limited nature are sufficient for the various trades involved is a matter for them to decide. Certainly if one union became aware of work likely to last for only two or three days and wanted immediate access to the site to observe that work, Strabag would be required to provide access to accommodate that interest. We do not anticipate that the members of any other trade will abuse that right of access or use it in such a manner exclusively or primarily to inconvenience Strabag. If any union or a group of unions did so, Strabag might be in the position of filing a grievance against them or imposing some restrictions designed to deal with an apparent harassing tactic. We do not propose to say more than that about a theoretical subject, particularly since there is no evidence that would suggest any such thing is likely to occur.

19. The limitation Strabag proposed at the hearing, that is a guided tour of the site once every two weeks, is a violation of Article 5.1, and we so declare. We direct Strabag to give access to the site to a representative from the Carpenters Union in the same manner and to the same extent that access is given to representatives from the Labourers and Operating Engineers. If there is any issue as to the failure of Strabag to provide appropriate access or that the Carpenters (or any other union) has abused its right of access, this panel (or as much of the panel as can be assembled in a convenient period of time) will remain seized to deal with that issue. A telephone conference may be appropriate.

20. The Carpenters asked us also to remain seized of any other relief they might seek in this grievance. We will remain seized for that purpose, although what other relief the Carpenters might seek is not intuitively obvious to us.

Ontario Power Generation Inc.

21. The grievance against OPG is dismissed. OPG did nothing that could possibly be a violation of the collective agreement. It simply contracted work out to Strabag, which controls the site on which work is done. Strabag accepts that it is bound by the collective agreement. OPG has no presence on the site and has not done anything or failed to do anything that the collective agreement requires it to do. If OPG were to take some active step, for instance, to bar someone from the site due to a previous employment history with OPG, it might be responsible for the fact that that person is not on the site. Such facts are not before us. OPG does not employ

anyone on the site, and therefore has no obligations as between a direct employer of labour and the union. OPG has no more responsibility for all that happens on the project than any other member of EPSCA.

22. The Carpenters allege that OPG could, as a term of its contract, require Strabag to give access to the Carpenters. For the purposes of argument, I will assume that is true, although the contract is presumably already fixed. While it may be true that it could insist that Strabag provide different forms of access, particularly if OPG were prepared to adjust the price it pays for this contract, there is no reason in the collective agreement why OPG should take that task upon itself.

23. The grievance against OPG is dismissed.

EPSCA

24. EPSCA is in a slightly different position, but the grievance is dismissed against it as well.

25. EPSCA negotiates the collective agreement on behalf of employers who are members of EPSCA and who are or become bound by that collective agreement. It is not an employer in its own right. It does bargain a collective agreement under which it undertakes many obligations, for example, accrediting union representatives (Article 5.1), providing advance notice of new projects (Article 7.1) and holding mark-up meetings (Article 8) providing information with respect to wages and dues deductions to employers working on sites covered by the collective agreement (Article 10) and so on.

26. All of the obligations of ESPCA under the collective agreement might be described as "coordinating efforts" rather than the work of a direct employer of labour on the site. Articles 7 and 8 are convenient examples of the division of responsibility between EPSCA and a particular employer. EPSCA agrees to provide written notice of a new project and to hold a mark-up meeting, with notice to all affected trades. It is the employer who makes the assignment. If the employer were to hold a mark-up meeting in default of EPSCA doing so, such act would not relieve EPSCA of its obligation to hold one (though it might limit any remedy available for a breach). EPSCA is not responsible for the assignment decision made by the employer, even if, in the end, that decision turns out to be incorrect.

27. The Union does not allege that EPSCA has done, or failed to do anything relating to any of the obligations to which it has agreed in the collective agreement. While it has not appointed an employee of Strabag to act as EPSCA representative, we heard no evidence that it was asked to do so. Given its willingness to do so expressed at the hearing, we do not anticipate that will be an issue. The Carpenters argue that EPSCA is required to enforce compliance with the collective agreement by all employers bound to that collective agreement and that it remains jointly and severally liable for any breaches of the collective agreement by any employer who actually does breach the collective agreement.

28. In our view, there is no basis for such an assertion. The fact that EPSCA acts as an agent for the purposes of bargaining a collective agreement, and retains for itself a coordinating role for certain defined purposes, does not make it a guarantor of the behaviour of any one

employer. There is no contractual basis in the collective agreement for finding that EPSCA has accepted any responsibility for the actions of any employer that it has not specifically retained for itself.

29. The application against EPSCA is dismissed. As noted, this decision deals with EPSCA and OPG as responding parties. No doubt, at least EPSCA would have status as an intervenor if it chose to do so.

Alleged Violations of Section 70, 72 and 76 of the *Labour Relations Act, 1995*

30. Given the results of this grievance, there is no need to deal with an allegation of a violation of sections 70, 72 and 76 of the *Labour Relations Act, 1995*, and we exercise our discretion not to inquire into it.

Conclusion

31. The applications against OPG and EPSCA are dismissed. We declare that Strabag has violated Article 5.1 of the collective agreement by refusing access or by unreasonably limiting access to the site. We direct Strabag to make access available to representatives of the Carpenters Union in the same manner that access is available to members of any trade union, and particularly those of the Labourers and Operating Engineers.

2049-03-U; 2320-03-M; 3379-03-M; 4016-03-U; 0681-04-M; 1441-04-U; 1598-04-M; 1599-04-U; 2651-04-M; 3044-04-M; 3088-05-M; 0221-06-U; 0231-06-U; 0233-06-M; 0392-06-M Universal Workers Union, Labourers' International Union of North America, Local 183, Applicant v. Labourers' International Union of North America, Responding Party v. Masonry Contractors' Association of Toronto; Toronto Residential Construction Labour Bureau; Metropolitan Toronto Apartment Builders Association; Ontario Concrete & Drain Contractors' Association; The Residential Low-Rise Forming Contractors' Association of Metropolitan Toronto and Vicinity Inc.; The Ontario Formwork Association; Pipeline Contractors Association; The Utility Contractors' Association of Ontario; Metropolitan Toronto Road Builders' Association; The Heavy Construction Association of Toronto; Greater Toronto Sewer and Watermain Contractors Association, Residential Framing Contractors' Association of Metropolitan Toronto and Vicinity; Labourers International Union of North America, Ontario Provincial District Council; Labourers' International Union of North America, Local 506; Labourers' International Union of North America, Local 527; Labourers' International Union of North America, Local 837, Labourers' International Union of North America, Local 1089, Labourers' International Union of North America, Local 1059, Labourers' International Union of North America, Local 1036, Labourers' International Union of North America, Local 625, Labourers' International Union of North America, Local 607, Labourers' International Union of North America, Local 247, Labourers' International Union of North America, Local 493, Jurisdictional Committee of Universal Workers

LIUNA Local 183 and the Group of 47 nominated delegates, Tony Dionisio, John Dias, Intervenors.

BEFORE: *Norm Jesin*, Vice-Chair.

APPEARANCES: *Brian Shell* for Jurisdictional Committee of Universal Workers LIUNA Local 183, Tony Dionisio and John Dias; *Alan Lenczner* and *Rob Gibson* for Universal Workers Union, Labourers' International Union of North America, Local 183, Trustee of Local 183 and LIUNA.

DECISION OF THE BOARD; November 2, 2006

1. As directed in my decision of October, 4, 2006, a consultation was held on October 23, 2006 to deal with two motions brought by LIUNA, Local 183, and its Trustee (collectively referred to as "LIUNA et al."). One motion was for a declaration that the Jurisdictional Committee for Local 183 (the "Committee") no longer had status to continue to participate in and/or seek relief in these proceedings. The other was for a declaration that counsel for the Committee, Shell Lawyers, was in a conflict of interest and for a further order removing Shell Lawyers as counsel for the Committee in these proceedings.

2. Early in the consultation, counsel for LIUNA et al. requested that I defer argument on the status of the Committee until the conflict issue was determined. I declined to do so because all facts and documentation relating to the status of the Committee had already been disclosed without objection and there was no concern that there would be any disclosure of or reliance on confidential information during argument on this matter. In that circumstance, I saw no reason to delay determination of that issue.

3. I will now deal with each of these motions in turn.

Status of the Committee

4. The Committee was created by a resolution of Local 183 passed in 2002. The Committee was established in anticipation by the Local 183 executive at that time that LIUNA might attempt to alter the jurisdiction of Local 183. It is not clear to me exactly how people were appointed to the Committee, but it is clear that members of the executive at that time, including Tony Dionisio and John Dias, were appointed to the Committee.

5. Ultimately, LIUNA did take steps to put Local 183 into trusteeship. Those efforts were resisted by both Local 183 and by the Committee. That resistance included the filing of the applications which are the subject of these proceedings.

6. On June 12, 2006, I issued a decision declaring that LIUNA did have just cause, within the meaning of ss. 149(1) of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") to place Local 183 into trusteeship. LIUNA did in fact impose such trusteeship and the executive of Local 183 was removed from office. However, the Committee continues to resist the trusteeship and to seek its rescission. Counsel for the Committee maintains that there are only two members of the Committee at the present time. They are Tony Dionisio and John Dias.

7. Counsel for LIUNA et al. maintains that because the trusteeship was created by Local 183 and consisted of members of its executive, the Committee was extinguished when the trusteeship was implemented and the executive was removed from office. In any event, the Trustee for Local 183 has purported to extinguish the Committee, if it has not already been extinguished, by letter dated October 17, 2006. Counsel conceded, correctly in my view, that any member of Local 183 was entitled to participate in these matters and was entitled to challenge the administration of the trusteeship. However, in his submission, the Committee could no longer have status as a party in these matters.

8. During his submission, Counsel for the Committee requested that Tony Dionisio and John Dias be added as parties and that they be allowed to rely on all facts pleaded by the Committee to date. Counsel for LIUNA et al. did not object to this request.

9. In all the circumstances, I agree that the Committee is not an entity capable of continuing to participate in these matters. However, in light of the positions expressed by Counsel, Tony Dionisio and John Dias are hereby added as parties in their own right. They may rely on all facts pleaded to this point and they may assert any position previously asserted by the Committee or such other position as they may advise.

Conflict of Interest

10. Shell Lawyers has acted for Local 183 from the outset of these proceedings up to and including June 12, 2006. On that day, as a result of the decision referred to above, LIUNA placed Local 183 into trusteeship. Shell Lawyers concedes that as Counsel to Local 183, it came in possession of privileged confidential information.

11. After the decision of June 12, 2006, Shell Lawyers was informed by the Trustee that it could no longer act for Local 183. However, Shell Lawyers continued to act for the Committee and for the group of nominated delegates that had intervened in these matters. In essence, Shell Lawyers continued to advance the same interests that were advanced by Local 183 up to the Board's decision of June 12, 2006. That is Shell Lawyers, whether on behalf of Local 183, or the Committee, or whether on behalf of individual clients, has been consistently advocating a result which would keep control of the Local away from LIUNA and its appointed Trustee.

12. Counsel for LIUNA et al. submits that now that Local 183 is being administered by the Trustee appointed by LIUNA, Shell Lawyers is acting against Local 183 and its interest. He submits that once it is conceded that Shell Lawyers has obtained privileged and confidential information, it is apparent that such information can be used in the ongoing litigation of these matters to the prejudice of Local 183. As a result, the possession of such information through its prior representation of Local 183 disqualifies Shell Lawyers from continuing to act against Local 183 in these matters. In reliance of these submission counsel relied on a number of cases including the Supreme Court judgment in *MacDonald Estates v. Martin*, [1990] 3 S.C.R. 1235.

13. In that case a junior solicitor in the firm representing the appellant left the employ of that firm and went to work for the firm representing the respondent. Notwithstanding evidence that no information was passed from the junior solicitor to the rest of the respondent's firm, the

Court ruled that the respondent's firm was in a conflict of interest and the respondent's law firm was therefore disqualified from continuing to act for the respondent.

14. Speaking for a majority, Sopinka, J. formulated the test as follows at p. 1260:

> Typically, these cases require two questions to be answered. (1) Did the lawyer receive confidential information attributable to a solicitor and client relationship relevant to the matter at hand? (2) Is there a risk that it will be used to prejudice the client?

15. Once both of the above questions were answered in the affirmative, the majority concluded that the respondent's firm should be disqualified.

16. The case before me is significantly different from the normal case in which the question of conflict arises. In this case the former executive of Local 183 resisted attempts by LIUNA to wrest control of the Local from the executive and to place it in the hands of a Trustee appointed by LIUNA. Instead, the former executive, who had been elected by the membership, sought to maintain control and authority over the local. By the decision of June 12, 2006 however, it was determined that LIUNA did have just cause to place a Trustee in control of the Local. However, other ancillary orders were made against LIUNA and the Board expressly retained jurisdiction to consider and vary those orders, when necessary.

17. It is hardly surprising that elements of the former executive assumed the role of monitoring compliance of the decision by LIUNA and the Trustee. Nor is it surprising that they continue to seek to have the local placed under the control of the local members, and not within the control of LIUNA and the Trustee. In essence, Shell Lawyers' two remaining clients, Tony Dionisio and John Dias, are continuing to advance the same interest that they have always advanced. By the same token, LIUNA and the Trustee continue to advance the same interest that they have always advanced in opposition to Messrs. Dionisio and Dias. What is different is that Local 183, under the authority of the LIUNA appointed Trustee, is now supporting the LIUNA position. But the real and substantive respondents to the allegations and positions advanced by Shell Lawyers are LIUNA and its appointed Trustee for Local 183. The Local's position in these matters changes depending on who is in control. The Local itself is not a substantive protagonist in this matter.

18. To illustrate the point, I asked counsel for LIUNA et al. if Shell Lawyers could have commenced an application for either reconsideration or judicial review of the June 12, 2006 decision. Counsel submitted that Shell Lawyers could not have commenced such an application as it would have been in conflict with the Trustee controlled Local 183. But surely the protagonists to the litigation must be entitled to challenge the decision using the same law firm that was used in the litigation of first instance. Any other conclusion would place an unwarranted restriction on the ability of Messrs. Dionisio and Dias to engage the solicitors of their choice.

19. Furthermore, there is no suggestion that Shell Lawyers is in possession of any information that was not received from or within the knowledge of his present clients, Messrs. Dionisio and Dias. In that light it is hard to see how allowing Shell Lawyers to act in this matter would prejudice Local 183 any more than by having any other law firm represent Messrs. Dionisio and Dias. It is the knowledge and information possessed by Messrs. Dionisio and Dias

that LIUNA et al. would be concerned with and not any peculiar knowledge and information otherwise obtained by Shell Lawyers.

20. At the outset of his judgement in *MacDonald Estates v. Martin, supra,* Sopinka, J. set out the policy considerations to be considered in determining whether a conflict exists. At p. 12 43 he wrote:

> In resolving this issue, the Court is concerned with at least three competing values. There is first of all the concern to maintain the high standards of the legal profession and the integrity of our system of justice. Furthermore, there is the countervailing value that a litigant should not be deprived of his or her choice of counsel without good cause. Finally, there is the desirability of permitting reasonable mobility in the legal profession. [The third factor is not a relevant consideration in this case.]

21. Clearly, the Supreme Court indicated that if, on an objective basis, there is a risk that the law firm will use confidential information to the prejudice of the party opposite, it must be disqualified. However, in assessing this question it is still important to bear in mind the need to have a party retain a solicitor of its choosing.

22. In addition, it is important to consider the particular circumstances and context in each case, to determine whether there is a potential for real prejudice resulting from the disclosure of such confidential information. This is highlighted in the Superior Court's decision at an earlier stage of these same proceedings (reported at [2004] OLRB Rep., March/April 471). That decision dealt with a question of whether another firm, acting for LIUNA at that time was in a conflict. The Court confirmed that the Board not only had the jurisdiction to determine whether the law firm was in conflict, but that it was a more suitable tribunal than the Court for making that determination in a case before it. In support of its view, the Court stated the following at paragraph 24:

> 24. The Board is in a much better position, with its specialized knowledge and expertise, to know whether the lawyer or law firm is in possession of confidential information, whether the confidential information is relevant to the issues that the Board has to determine and whether that confidential information could be used to the detriment of the objecting party. It makes more sense for the tribunal, who must make the ultimate determination of the issues on the hearing before it, to decide whether any conflict alleged against the lawyer is real or only apparent, based on the usual practices of the lawyers and law firms who appear before it. For example, in this case the Board might conclude that whatever information the lawyer and the law firm either did or might have become possessed of as a consequence of acting for the objecting party in the certification hearing could not possibly prejudice the objecting party in respect of the current unfair labour practices hearing. The Board is in a much better position to determine whether that is the reality of the situation than the court would be.

23. This is not a case where there is an alleged conflict because the law firm has hired a solicitor who used to work for the party opposite. Nor is it a case where the law firm acted for one party in another matter and now seeks to act against that party in a subsequent matter. (Examples of such cases include *Ford Motor Company of Canada v. Osler, Hoskin & Harcourt*

(1996), 27 O.R. (3d) 181 and cases cited therein.) Rather this is a case where it is alleged that the law firm which has properly initiated the litigation and that has properly participated for some three years must be removed in the middle of the litigation because it has been unsuccessful to this point. Surely this is a result which is inconsistent with the protection afforded under s. 149 of the Act.

24. Subsection 149(1) of the Act provides that a parent union may only assume supervision of a local with just cause. Subsection 149(4) expressly provides that where the Board finds that there is just cause for a parent to assume supervision, the Board may make such orders and directions "as it considers appropriate, including orders respecting the continuing supervision or control of the local trade union". Thus, s. 149 provides the Board with the ability to balance particular labour relations considerations in providing relief subsequent to the imposition of trusteeship. In my view, a conflict is not created when the same protagonists who pursue relief prior to the imposition of a trusteeship, continue to engage the same counsel to seek the same relief subsequent to the imposition of the trusteeship. It would furthermore create unwarranted difficulties in the administration of these provisions if those resisting a trusteeship would be required to retain new counsel to pursue ongoing matters in the same case after trusteeship is sanctioned by the Board.

25. In light of all the circumstances described above, I have determined that Shell Lawyers is not in a conflict of interest in these matters. The motion brought by LIUNA et al. in this regard is therefore dismissed.

26. These matters will continue for consultation on Monday, November 27, 2006, at 9:30 a.m. in the "Board Room", 2nd Floor, 505 University Avenue, Toronto, Ontario.

COURT PROCEEDINGS

0652-03-R (Court File No. 06-DV-1234) C.M.G. Innovations Co. Ltd. v. Ontario (Labour Relations Board), Ontario Pipe Trades Council, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States of America and Canada, Local 819, Cornwall & District Contracting Ltd., City & District Steeplejacks Limited, and Christian Labour Association of Canada, Local 52

Judicial Review – Related Employer – Sale of Business – On judicial review the court found that the standard was patent unreasonableness, that there was evidence to support the Board's finding that Courtney Wheeler was a key man, that the Board was entitled to draw the conclusions that it did from the evidence, and that it made no error with respect to the application of s. 126(5)2 – Application for judicial review dismissed

Superior Court of Justice (Divisional Court), Platana, Stong and Swinton JJ. November 22, 2006.

ENDORSEMENT

[1] The standard for judicial review of this decision of the Ontario Labour Relations Board is patent unreasonableness for the following reasons. The Board, in determining whether there was a "sale of business", applied the *Ontario Labour Relations Act, 1995*, S.O. 1995, c. 1 ("OLRA") and made a decision squarely within its jurisdiction. The decision was largely factual in nature, and it required the Board to exercise its specialized expertise in the area of labour relations and, in particular, construction labour relations. Moreover, there are two strong privative clauses in the OLRA in ss. 114(1) and 116, as well as a further privative clause in s. 69(12) stating that the Board's decision on a sale of a business is final and binding.

[2] In applying s. 69 of the OLRA, the Board applied its established jurisprudence respecting the sale of a business in a bid-oriented section of the construction industry. The applicant takes issue with a number of the factual findings of the Board and has submitted an affidavit from Courtney Wheeler disputing the evidentiary basis for the Board's findings. Affidavit evidence is not admissible on an application for judicial review except to show a complete absence of evidence on an essential point or to show a denial of natural justice (*Re Keeprite Workers' Independent Union et al.* (1980), 29 O.R. (2d) 513 (C.A.) at p. 521).

[3] There was evidence before the Board to support its findings that Courtney Wheeler was a "key man" at both City and CMG, and that his departure to CMG constituted a sale of a business. The Board was entitled to draw the conclusions that it did from the evidence as to the role of Courtney in each of the companies, as well as the substantial disruption to City's business after he left.

[4] The Board made no error with respect to the application of s. 126(5)2, having made a factual finding that there was a substantial disruption to or loss of City's business and having taken that into account in determining whether there was a sale of a business.

[5] The Board's decision was not patently unreasonable. In the context of the evidence presented to it, the Board was entitled to find a sale of a business, given Courtney's departure from one company which performed general contracting, including mechanical work, to another general contracting company, which also performed mechanical work, and where Courtney performed the same range and nature of essential duties in both companies.

[6] Therefore, the application for judicial review is dismissed. As agreed by the parties, costs to the respondent Unions are fixed at $7, 500.00. No costs are sought by or awarded against the Ontario Labour Relations Board.

4212-05-G; 4213-05-G; 0330-06-G (Court File Nos. 254/06; 326/06) Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Union Local 598 Applicant v. D.M.S. Concrete & General Contracting Inc. and OLRB, Respondents

Construction Industry Grievance - Contempt – Stated Case – The Board stated a case for contempt to Divisional Court when the responding party failed to attend a hearing or comply with production orders issued by the Board – When the responding party failed to appear at court, the Court found it to be in contempt of the Board and awarded a fine – The Court then made its own production order and adjourned the matter for one month to afford the responding party an opportunity to comply

Superior Court of Justice (Divisional Court), Cummingham ACJ, MacDonald J. and Swinton J., November 3, 2006.

THE COURT

This appeal/application is allowed.

[1] This court declares that the Respondent, DMS Concrete is in contempt of the orders of the OLRB dated April 6/06 and June 13/06 and therefore pursuant to s.13 of the Statutory Power Procedures Act RSO 1990 c s.22 is liable to be punished in a like manner as if guilty of contempt of this Court.

[2] The Court orders that the Respondent shall no later than 5:00 p.m. on Thursday November 30/06 produce to the Applicant's solicitors, CaleyWray Suite 1205, 111 Richmond St. W. Toronto M5H 2G4 copies of all materials set out in the herein before referred to decisions of the Board.

[3] The Court orders that the Respondent shall pay by no later than 5:00 p.m. Nov. 30/06 a fine fixed in the amount of $5000.00 in each case.

[4] The Court orders that the costs of these applications are fixed at $5,000 all inclusive to be payable by the Respondent to the Applicant's solicitors by no later than 5:00 p.m. Nov. 30/06.

[5] This Court orders that this Application is adjourned until Dec. 7/06 at 10:00 a.m. at which time a panel of this Court will inquire into whether the Respondent have purged it's contempt and whether the orders has been complied with, failing which additional sanctions against the Respondent may be sought which would include additional fines.

[6] This Court orders that this order be served personally by the Union upon the Respondent DMS as well as upon Mr. Mohan Dhillon.

4212-05-G; 4213-05-G; 0330-06-G (Court File Nos. 254/06; 326/06) Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Union Local 598 Applicant v. D.M.S. Concrete & General Contracting Inc. and OLRB, Respondents

Construction Industry Grievance – Contempt – Stated Case – The Court found problems with the material before it respecting service on the respondents – The matter was adjourned to enable the applicant to either serve the respondents in accordance with the existing order or to obtain in Divisional Court motions court an order permitting service on some other basis – Matter adjourned

Superior Court of Justice (Divisional Court), Lane, Matlow and Smith JJ.
December 7, 2006.

The order finding the respondent in contempt required that it be served upon the respondent personally and on Mr. Mohan Dhillon personally. Mr. M. Dhillon is the sole director of record of the respondent. The company has not been served in accordance with the rules as to service upon a company. Mr. B. [sic] Dhillon was served at his home. Although when the original material was served he was a person in charge of the respondent's office, that was not the case on this latest attempt at service. Nor has Mr. M. Dhillon been served personally. There are problems with the material before us.

In our view the appropriate procedure is to adjourn this matter to a date to be fixed by the Registrar to enable the applicant to either serve the respondent and Mr. M. Dhillon in accordance with the existing order or obtain in Divisional Court motions court an order permitting service upon some other basis; and to consider and if so advised move under Rule 60.11 (6) for relief against Mr. M. Dhillon personally.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING OCTOBER 2006

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

0990-05-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Highview Plumbing & Heating Ltd. (Respondent) v. Universal Workers Union, Labourers' International Union of North America Local 183 (Intervenor)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Highview Plumbing Limited in all sectors of the construction industry other than the industrial, commercial and institutional sector, in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

0351-06-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Desi's Aluminum Cambridge (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Desi's Aluminum Cambridge in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of Desi's Aluminum Cambridge in all sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

0968-06-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Harnden & King Construction Inc. (Respondent)

Unit: "all construction labourers in the employ of Harden & King Construction Inc. in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

1187-06-R: International Union of Operating Engineers, Local 793 (Applicant) v. Biloski Contractors Ltd. (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of Biloski Contractors Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of Biloski Contractors Ltd. in all sectors of the construction industry in all other sectors of the construction industry in the District of Thunder Bay, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (18 employees in unit)

1402-06-R: United Brotherhood of Carpenters and Joiners of America, Local 93 (Applicant) v. Swing N Scaff Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Swing N Scaff Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of Swing N Scaff Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (11 employees in unit)

1854-06-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Current Construction Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Current Construction Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of Current Construction Inc. in all sectors of the construction industry in the County of Simcoe, the District Municipality of Muskoka and in the District of Parry Sound outside a radius of 33 kilometers (approximately 20 miles) of the North Bay post office and outside a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (0 employees in unit)

1928-06-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Cassidy E.W. Construction Consultant Ltd. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Cassidy E.W. Construction Consultant Ltd., in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all painters and painters' apprentices in the employ of Cassidy E.W. Construction Consultant Ltd., in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit) *(Clarity Note)*

2001-06-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1553199 Ontario Incorporated (Respondent)

Unit: "all carpenters, carpenters' apprentices, construction labourers, ironworkers and ironworkers' apprentices in the employ of 1553199 Ontario Incorporated in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

2011-06-R: International Brotherhood of Electrical Workers, Local 1739 (Applicant) v. 894907 Ontario Ltd. o/a Simcoe York Electric (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of 894907 Ontario Ltd. o/a Simcoe York Electric in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of 894907 Ontario Ltd. o/a Simcoe York Electric in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

2104-06-R: Labourers' International Union of North America, Local 625 (Applicant) v. Bridge Tite Coatings Inc., Bridge Tite Waterproofing and Sealing Ltd. (Respondents)

Unit: "all construction labourers in the employ of Bridge Tite Coatings Inc. and Bridge Tite Waterproofing and Sealing Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of Bridge Tite Coatings Inc. and Bridge Tite Waterproofing and Sealing Ltd. in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

2175-06-R: Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. J.R. Construction and Renovation (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of J.R. Construction and Renovation in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non working foreman all carpenters and carpenters' apprentices in the employ of J.R. Construction and Renovation in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

2197-06-R: Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 124 (Applicant) v. B.J. Normand Ltd. (Respondent)

Unit: "all journeyman and apprentice plasterers and spray fibre applicators, drywall tapers and rigid insulation applicators in the employ of B.J. Normand Ltd. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

2204-06-R: Construction Workers Local 52 affiliated with the Christian Labour Association of Canada (Applicant) v. JML Electric Inc. (Respondent)

Unit: "all journeyman electricians and apprentice electricians working for JML Electric Inc. in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville, Halton Hills and Milton in the Regional Municipality of Halton, the Towns of Ajax and Pickering in the Regional Municipality of Durham, the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township in all sectors of the construction industry save and except non-working foremen and persons above the rank of non-working foreman" (12 employees in unit)

2290-06-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Landmark Enterprises Ltd. (Respondent)

Unit: "all construction labourers in the employ of Landmark Enterprises Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of Landmark Enterprises Ltd. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce, and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (4 employees in unit)

Bargaining Agents Certified Subsequent to Vote

0904-06-R: The International Union of Painters and Allied Trades, Local Union 1795 (Applicant) v. J & T Caulking and Sealing Corp. (Respondent) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervenor)

Unit: "all carpenters and carpenters' apprentices employed by J & T Caulking and Sealing Corp., excluding the industrial, commercial and institutional sector, in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the County of Simcoe and the District Municipality of Muskoka, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked in favour of Intervenor	0
Number of ballots segregated and not counted	0

1824-06-R: Service Employees International Union Local 1.on (Applicant) v. Southlake Regional Health Centre (Respondent)

Unit: "all part-time and casual office and clerical employees employed by Southlake Regional Health Centre in Newmarket, Ontario, save and except Professional Resources (Supervisors) persons above the rank of Professional Resource (Supervisors), Administrative Assistants, Executive Assistants, Payroll Officers, Comptroller, all staff in Human Resources, all staff in Occupational Health, all staff in Administration, Accountants, Research Assistant-Nursing Administration, Chief Nursing Officer, Preferred Accommodation representatives, Health Data Analysts, all persons regularly employed for more than 24 hours per week, students employed during the school vacation period and those persons covered by existing collective agreements" (120 employees in unit)

Number of names of persons on revised voters' list	126
Number of persons who cast ballots	49
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	47
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	43
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	2

1851-06-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Beach Grove Golf and Country Club Limited (Respondent)

Unit: "all employees of Beach Grove Golf and Country Club Limited in the County of Essex, save and except supervisors, persons above the rank of supervisor, greens and groundskeepers and students employed during the summer vacation period" (59 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	59
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	37
Number of segregated ballots cast by persons whose names appear on voter's list	0

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	35
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

1858-06-R: Teamsters Local Union No. 879 (Applicant) v. Brunner Manufacturing & Sales Ltd. (Respondent) v. United Food & Commercial Workers Canada Local 175 (Intervenor)

Unit: "all employees of Brunner Manufacturing & Sales Ltd. in the Niagara Falls Plant in respect to wages and working conditions, save and except foreman, persons above the rank of foremen" (41 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	42
Number of persons who cast ballots	40
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	40
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	25
Number of ballots marked in favour of Intervenor	15
Number of ballots segregated and not counted	0

1875-06-R: International Union of Painters & Allied Trades, Local 1590 (Applicant) v. Onyx Chemical Cleaning Inc. (Respondent)

Unit: "all employees of Onyx Chemical Cleaning Inc. employed at and operating out of the City of Sarnia, save and except supervisors and persons above the rank of supervisor, office clerical and sales staff" (7 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

1882-06-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Formula Ford Lincoln Sales Limited (Respondent)

Unit: "all employees of Formula Ford Limited in the City of Pickering, save and except supervisors and persons above the rank of supervisor, office, clerical and auto sales staff" (26 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	23

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	7

1897-06-R: Teamsters International Union, Local 847, AFL-CIO-CLC (Applicant) v. Canadian Corps of Commissionaires (Hamilton) (Respondent)

Unit: "all employees of Canadian Corps of Commissionaires (Hamilton) working at 94 York Boulevard, Hamilton, Ontario, save and except supervisors and those above the rank of supervisor" (8 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

1925-06-R: International Union of Operating Engineers Local 772 (Applicant) v. Comstock Canada Ltd. (Respondent)

Unit: "all employees of Comstock Canada Ltd. employed at its warehouse located at 3455 Landmark Road, Burlington, Ontario, employed in shipping, receiving, save and except persons above the rank of forepersons" (8 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	
Number of ballots segregated and not counted	0

1943-06-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. LC Bakery Equipment Services Ltd. (Respondent)

Unit: "all employees of LC Bakery Equipment Services Ltd. in the City of Brantford, save and except supervisors and persons above the rank of supervisor, and office, clerical, sales and technical staff" (16 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	3

1944-06-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Pilkington Glass of Canada Limited (Respondent)

Unit: "all employees of Pilkington Glass of Canada Ltd. in Whitby in Durham Region, save and except supervisors, persons, above the rank of supervisor, sales staff, office and clerical staff, technical staff and students employed during the school vacation period" (81 employees in unit) *(Clarity Note) (Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	92
Number of persons who cast ballots	96
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	89
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	7
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	86
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	7

1945-06-R: Ontario Public Service Employees Union (Applicant) v. Ottawa-Carleton Catholic School Board (Respondent)

Unit: "all employees of the Ottawa-Carleton Catholic School Board employed in the English as Second Language Program and Literacy and Basic Skills as instructors and assessment instructors in the ESL Outreach Program in the City of Ottawa, save and except persons regularly employed for more than 24 hours per week and persons above the rank of supervisor and persons employed in any bargaining unit for which any trade union held bargaining rights as of September 26, 2006" (65 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	65
Number of persons who cast ballots	59
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	59
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	59
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1985-06-R: Teamsters Local Union No. 879 (Applicant) v. Lafarge Canada Inc./LCM Eastern (Respondent)

Unit: "all Ready Mix Drivers of Lafarge Canada Inc. working at 594728 Highway 59, Woodstock, Ontario, N4S 7O5, save and except clerical employees, batcher employees, dispatcher employees, superintendents, mechanics or management" (8 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

1986-06-R: Ontario Public Service Employees Union (Applicant) v. Aberdeen Gardens Retirement Residence (Respondent)

Unit: "all employees of Aberdeen Gardens Retirement Residence in the City of Hamilton, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (32 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	27
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

1987-06-R: Service Employees International Union Local 1.on (Applicant) v. Timiskaming Home Support/Soutien A Domicile (Respondent)

Unit: "all employees of Timiskaming Home Support/Soutien A Domicile in the District of Timiskaming, save and except Supervisors, persons above the rank of Supervisor, Registered Nurses, physiotherapists, occupational therapists, delivery sales people, office and clerical staff" (90 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	88
Number of persons who cast ballots	75
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	73
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	55

Number of ballots marked against applicant	18
Number of ballots segregated and not counted	2

1998-06-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Chartwell Seniors Housing Real Estate Investment Trust c.o.b. as Rouge Valley Retirement Residence (Respondent)

Unit: "all employees of Chartwell Seniors Housing Real Estate Investment Trust c.o.b. as Rouge Valley Retirement Residence in the Town of Markham save and except supervisors, those above the rank of supervisor, office and clerical staff" (20 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

2007-06-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. OfficeClean (Respondent)

Unit: "all employees of OfficeClean at 55 Bloor Street West in the Municipality of Metropolitan Toronto, save and except Supervisors and persons above the rank of Supervisor" (16 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

2008-06-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Bee-Clean Building Maintenance (Respondent)

Unit: "all employees of Bee-Clean Building Maintenance at Frost Building North and South, 95 Grosvenor Street in the Municipality of Toronto, Ontario, save and except those above the rank of supervisor" (5 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

2039-06-R: Canadian Union of Public Employees (Applicant) v. Belvedere Heights Home for the Aged (Respondent) v. Canadian Health Care Workers (Intervenor)

Unit: "all employees at the Home in Parry Sound, save and except professional nursing staff, physiotherapist, occupational therapists, adjuvants, managers, supervisors, foremen, persons above the ranks of supervisor and foremen, office staff, security guards and students employed during the school vacation period" (110 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	101
Number of persons who cast ballots	71
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	68
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	66
Number of ballots marked in favour of Intervenor	2
Number of ballots segregated and not counted	3

2048-06-R: Labourers' International Union of North America, Local 837 (Applicant) v. Dover Cone (A Division of Dover Industries Ltd.) (Respondent) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW Canada) (Intervenor)

Unit: "all employees of Dover Cone (A Division of Dover Industries Ltd.) at its Burlington plant, save and except office and sales staff, the Production Manager, Plant Manager, Maintenance Manager, Maintenance Supervisor, Quality Control Supervisor, Quality Control Technician, Shift Supervisors and persons above the rank of Shift Supervisor" (93 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	93
Number of persons who cast ballots	70
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	70
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	2
Number of ballots marked in favour of Intervenor	49
Number of ballots marked in favour of second Intervenor	18
Number of ballots segregated and not counted	0

2067-06-R: Ontario Public Service Employees Union (Applicant) v. Omni Facility Services Canada Limited (Respondent)

Unit: "all employees of Omni Facility Services Canada Limited at the Ontario Police College in Aylmer, save and except supervisors and persons above the rank of supervisor" (17 employees in unit)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

2097-06-R: Teamsters Local Union No. 938 (Applicant) v. Stock Transportation Ltd. (Respondent)

Unit: "all employees of Stock Transportation Ltd. employed in its garage at 60 McCulloch Avenue in the City of Toronto save and except managers, persons above the rank of manager, office and clerical staff" (7 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

2112-06-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Nanda's Holding Ltd. c.o.b. as Comfort Suites Downtown Windsor (Respondent)

Unit: "all employees of Nanda's Holding Ltd. c.o.b. as Comfort Suites Downtown Windsor in the City of Windsor, save and except supervisors, those above the rank of supervisor, office and sales staff" (14 employees in unit) *(Clarity Note) (Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

2124-06-R: Canadian Union of Public Employees (Applicant) v. Kids and Company (Respondent)

Unit: "all employees of Kids and Company in the City of Toronto, save and except supervisors, persons above the rank of supervisor and students" (93 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	110
Number of persons who cast ballots	91
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	90
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	59
Number of ballots marked against applicant	31
Number of ballots segregated and not counted	1

Applications for Certification Dismissed Without Vote

1997-06-R: Canadian Cabinetry Union (Applicant) v. Canac Kitchens, a Division of Kohler Co. (Respondent) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Intervenor)

2164-06-R: Loeweld Employees Association (Applicant) v. Loeweld Inc. (Respondent)

Applications for Certification Dismissed Subsequent to Vote

0330-04-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. John Boddy Developments Ltd. (Respondent)

Unit: "all construction labourers in the employ of John Boddy Developments Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

0529-06-R: International Union of Operating Engineers, Local 793 (Applicant) v. Canadian Waste Services Inc. (Respondent) v. Manufacturing, Transportation, and Allied Workers Union, Local 519, affiliated with Christian Labour Association of Canada, United Food & Commercial Workers International Union, Local 175 (Intervenors)

Unit: "all employees of Canadian Waste Services Inc. working in and out of the County of Lambton, save and except superintendents, office staff including landfill scale operators, students employed during the school vacation period, drivers and helpers engaged in the Industrial/Commercial/Institutional sector and under municipal contracts obtained by Canadian Waste Services Inc., and employees performing work associated with the construction of landfill infrastructure engineered works" (18 employees in unit)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names	17

appear on voter's list	
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked in favour of Intervenor	11
Number of ballots segregated and not counted	2

1556-06-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Forest Contractors Ltd. (Respondent)

Unit: "all construction labourers in the employ of Forest Contractors Ltd. in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman." (37 employees in unit)

Number of names of persons on revised voters' list	36
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	19
Number of ballots segregated and not counted	13

1857-06-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. William Neilson Limited (Respondent) v. Christian Labour Association of Canada (CLAC) (Intervenor)

Unit: "all employees of William Neilson Limited at the Halton Hills Milk Pasteurizing Plant, save and except Supervisors, persons above the rank of Supervisor, office staff, and persons covered by subsisting collective agreements" (134 employees in unit)

Number of names of persons on revised voters' list	134
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	105
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of applicant	69
Number of ballots marked in favour of Intervenor	19
Number of ballots marked in favour of second Intervenor	17
Number of ballots segregated and not counted	5

1859-06-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. 1512081 Ontario Limited o/a Abrams (Respondent)

Unit: "all employees of the responding party in the County of Essex, save and except supervisors, those above the rank of supervisor, dispatchers, office and sales staff" (10 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

1873-06-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647, affiliated with International Brotherhood of Teamsters (Applicant) v. William Neilson Limited (Respondent) v. Christian Labour Association of Canada (CLAC) (Intervenor)

Unit: "all employees of William Neilson Limited at the Halton Hills Milk Pasteurizing Plant, save and except Supervisors, persons above the rank of Supervisor, office staff, and persons covered by subsisting collective agreements" (134 employees in unit)

Number of names of persons on revised voters' list	134
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	110
Number of segregated ballots cast by persons whose names appear on voter's list	105
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	69
Number of ballots marked in favour of Intervenor	19
Number of ballots marked in favour of second Intervenor	17
Number of ballots segregated and not counted	

2043-06-R: Specialty & Temporary Employees Union (Applicant) v. Dover Cone (A Division of Dover Indusgtries Ltd.) (Respondent) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW Canada) (Intervenor)

Unit: "all employees of Dover Cone (a division of Dover Industries Limited) at its Burlington plant save and except office and sales staff, the Production Manager, Plant Manager, Maintenance Manager, Maintenance Supervisor, Quality Control Supervisor, Quality Control Technician, Shift Supervisors and persons above the rank of Shift Supervisor" (90 employees in unit)

Number of names of persons on revised voters' list	93
Number of persons who cast ballots	70
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	70
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	2
Number of ballots marked in favour of Intervenor	49

Number of ballots marked in favour of second Intervenor	18
Number of ballots segregated and not counted	0

2049-06-R: Eastern Ontario Volunteer Firefighters Association, Local 920 affiliated with Christian Labour Association of Canada (Applicant) v. The Corporation of the Township of Severn (Respondent)

Unit: "all volunteer firefighters as defined by subsection 1(1) of the Fire Protection and Prevention Act, 1997, employed by the Township of Severn save and except the Deputy Chief and those above the rank of Deputy Chief" (67 employees in unit)

Number of names of persons on revised voters' list	64
Number of persons who cast ballots	57
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	53
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	33
Number of ballots segregated and not counted	4

Applications for Certification Withdrawn

3238-04-R: Labourers' International Union of North America, Local 625 (Applicant) v. Verly Construction Group Inc. (Respondent)

1242-05-R: Labourers' International Union of North America, Local 625 (Applicant) v. B.K. Cornerstone Design Build Ltd. (Respondent)

3504-05-R: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. J.R. Clarke & Associates Ltd. and, East Coast Environmental Limited (Respondents)

0710-06-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Easton's Group of Hotels Inc. and, 1406284 Ontario Inc. (Respondents)

1128-06-R: Labourers' International Union of North America, Local 493 (Applicant) v. William Day Construction Limited (Respondent)

1283-06-R: Labourers' International Union of North America, Local 625 (Applicant) v. Paramount Homes Inc. Operating as Capaldi Homes (Respondent)

2026-06-R: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Juan Carlos Licona c.o.b. as Licona Drywall Services (Respondent)

2044-06-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Jag Building Group Inc. (Respondent)

2045-06-R: The International Union of Painters and Allied Trades, Local Union 557 (Applicant) v. Com-Kote Interiors Inc. (Respondent)

2223-06-R: Canadian Union of Public Employees (Applicant) v. Tabor Manor Mennonite Brethren Senior Citizens Home (Respondent)

FIRST AGREEMENT - DIRECTION

1904-06-FC: Labourers' International Union of North America, Local 1059 (Applicant) v. Botelho Construction Ltd. (Respondent) *(Withdrawn)*

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

0101-05-R: International Assliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local 822 (Applicant) v. Toronto Theatre Ltd., Clear Channel Entertainment, Theatre Management Group – Toronto Corp., Blue Man Group and/or Blue Man Productions, SFX Core Inc. and CCE Spinco Inc. C.O.B. as Live Nation (Respondents) *(Withdrawn)*

3683-05-R: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. J.R. Clarke & Associates Ltd. and, East Coast Environmental Limited (Respondents) *(Withdrawn)*

3938-05-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Terra Infrastructure Inc., Clearway Construction Inc. (Respondents) v. Universal Workers Union, LIUNA Local 183, Greater Toronto Sewer and Watermain Contractors Association (Intervenors) *(Withdrawn)*

0931-06-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Easton's Group of Hotels Inc. and, 1406284 Ontario Inc. (Respondents) *(Withdrawn)*

1659-06-R: Labourers' International Union of North America, Local 837 (Applicant) v. Antonio Amaral, carrying on business as Active Masonry and Active Masonry Inc. (Respondent) *(Granted)*

SALE OF A BUSINESS

0101-05-R: International Assliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local 822 (Applicant) v. Toronto Theatre Ltd., Clear Channel Entertainment, Theatre Management Group – Toronto Corp., Blue Man Group and/or Blue Man Productions, SFX Core Inc. and CCE Spinco Inc. C.O.B. as Live Nation (Respondents) *(Withdrawn)*

3683-05-R: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. J.R. Clarke & Associates Ltd. and, East Coast Environmental Limited (Respondents) *(Withdrawn)*

3938-05-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Terra Infrastructure Inc., Clearway Construction Inc. (Respondents) v. Universal Workers Union, LIUNA Local 183, Greater Toronto Sewer and Watermain Contractors Association (Intervenors) *(Withdrawn)*

1659-06-R: Labourers' International Union of North America, Local 837 (Applicant) v. Antonio Amaral, carrying on business as Active Masonry and Active Masonry Inc. (Respondent) *(Granted)*

UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

1316-06-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 7-0665 (Applicant) v. Paper, Allied-Industrial, Chemical & Energy Workers International Union, Local 7-0665, Kimberly-Clark Inc. Pulp and Forest Products Operations c.o.b. as Neenah Paper Inc. (Respondents) *(Granted)*

1368-06-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial And Service Workers International Union (United Steelworkers), Local 7-1330 (Applicant) v. Paper, Allied-Industrial, Chemical

& Energy Workers International Union, Local 7-1330, Abitibi-Consolidated Inc. Kenora Division (Respondents) *(Granted)*

1370-06-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 7-0548 (Applicant) v. Paper, Allied-Industrial, Chemical & Energy Workers International Union, Local 7-0548, Marathon Pulp Inc. (Respondents) *(Granted)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

3684-05-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Central Ontario Regional Council of Carpenters, Drywall and Allied Workers, United Brotherhood of Carpenters and Joiners of America, and Allied Construction Employees, Local 1030, United Brotherhood of Carpenters and Joiners of America (Respondent) v. Fernbrook Homes Limited (Intervenor) *(Dimissed)*

1262-06-R: Walter Wolochatiuk (Applicant) v. UFCW Canada (Respondent) v. United Food and Commercial Workers Canada, Local 1993, Ride Management Limited c.o.b. Discount Car and Truck Rentals (Intervenors) *(Dimissed)*

Unit: "all employees of Ride Management Limited in the Cities of Toronto and Mississauga, save and except store managers, area managers and persons above the rank of general manager, drivers and employees who work less than 24 hours per week" (28 employees in unit)

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	28
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	15
Number of ballots marked against respondent	11
Number of ballots segregated and not counted	2

1801-06-R: Don Carley (Applicant) v. Teamsters Local Union 938 (Respondent) v. Clarke Transport Inc. (Intervenor) *(Granted)*

Unit: "all employees of Clarke Transport Inc. in Concord, Ontario working in the dock operation, that is, foremen, dispatchers, cubers, operations co-ordinators, billing clerks, dock operations maintenance persons and imaging clerks, save and except those above the rank of foremen." (15 employees in unit)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	5
Number of ballots marked against respondent	10
Number of ballots segregated and not counted	0

1817-06-R: Lucienne S. Morin (Applicant) v. International Union of Operating Engineers, Local 772 (Respondent) *(Granted)*

Unit: "all office and clerical employees of Hôpital Montfort, save and except supervisors, persons above the rank of supervisor, executive assistant to the executive director, executive assistant to the assistant executive director, secretary to health and safety services, paramedical employees, Human Resources technician, Human Resources clerk, staffing officer and persons for whom a[nother] trade union held bargaining rights." (0 employees in unit)

Number of names of persons on revised voters' list	157
Number of persons who cast ballots	72
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	70
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	21
Number of ballots marked against respondent	49
Number of ballots segregated and not counted	2

1971-06-R: Pamela Ziebarth (Applicant) v. Hospitality & Service Trades Union, Local 261 (Respondent) *(Dimissed)*

2027-06-R: Ed Yaroscavitch (Applicant) v. United Brotherhood of Retail, Food, Industrial & Service Trades International Union (Respondent) *(Withdrawn)*

2072-06-R: Douglas A. Frost (Applicant) v. Communications, Energy and Paperworkers Union of Canada, Local 591-G (Respondent) v. Ellis Packaging Limited (Intervenor) *(Granted)*

Unit: "all employees of Ellis Packaging Limited in Pickering, save and except foremen, persons above the rank of foreman, management trainee, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during school vacation periods" (84 employees in unit)

Number of names of persons on revised voters' list	86
Number of persons who cast ballots	84
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	82
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	
Number of ballots marked in favour of respondent	27
Number of ballots marked against respondent	55
Number of ballots segregated and not counted	2

2101-06-R: Tim Finlay (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 240 (Respondent) v. C & C Coulter (Windsor) 2006 Ltd. (Intervenor) *(Granted)*

Unit #1: "all employees of the Company in the City of Windsor, in the County of Essex, save and except supervisors, persons above the rank of supervisor, and students employed during the school vacation period and students in a co-operative program" (19 employees in unit)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	0
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1

Number of spoiled ballots	0
Number of ballots marked in favour of respondent	6
Number of ballots marked against respondent	14
Number of ballots segregated and not counted	0

REFERRAL FROM MINISTER (SECTION 115)

1575-06-M: Specialty Care Woodhall Park Inc. (Applicant) v. Ontario Nurses' Association (Respondent) *(Withdrawn)*

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

2010-06-U: McKesson Canada Corporation (Applicant) v. Teamsters, Chemical, Energy and Allied Workers Local 1979, Steven Rodriguez, Kenneth Lowe and, Pasquale Cicinelli (Respondents) *(Granted)*

COMPLAINTS OF UNFAIR LABOUR PRACTICE

3755-04-U: Francine Portelance (Applicant) v. Canadian Union of Public Employees Local 4540 (Respondent) v. Service de santé SCO (Intervenor) *(Withdrawn) (Having regard to the agreement of the parties.)*

0570-05-U: John Racho (Applicant) v. United Steelworkers of America, Local 719 (Respondent) v. Cooper Standard Automotive (Intervenor) *(Dimissed)*

0672-05-U: Michael McIntosh (Applicant) v. Canadian Union of Public Employees, Local 79 (Respondent) v. City of Toronto (Intervenor) *(Dimissed)*

1507-05-U; 3062-05-U; 3793-05-U; 0247-06-U: Ontario Public Service Employees Union (Applicant) v. Complex Services Inc. c.o.b. as Fallsview Casino Resort (Respondent) *(Withdrawn)*

1560-05-U: Rob Wilson, on his own behalf and on behalf of members of CAW, Local 1967 Colleen Douglas, on her own behalf and on behalf of members of CAW, Local 673 (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-TCA) Locals 1967 and 673 (Respondent) v. Boeing Toronto Ltd. (Intervenor) *(Dimissed)*

1664-05-U: Public Service Alliance of Canada (Applicant) v. Ontario Lottery and Gaming Corporation (Respondent) *(Withdrawn)*

3039-05-U: Mr. Rolando Silverio (Applicant) v. CAW/TCA Canada, Local 504 (Respondent) v. Burlington Technologies Inc. (Intervenor) *(Dimissed)*

3161-05-U: Lloyd Coish (Applicant) v. Sheet Metal Workers' International Association, Local Union 562 (Respondent) *(Withdrawn)*

3189-05-U: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Paradigm Mechanical Incorporated (Respondent) *(Withdrawn)*

3260-05-U: Public Service Alliance of Canada (Applicant) v. Ontario Lottery and Gaming Corporation (Respondent) *(Withdrawn)*

3343-05-U: Andrew Fernand Pelletier (Applicant) v. Christian Labour Association of Canada (Respondent) *(Dimissed)*

3505-05-U: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. J.R. Clarke & Associates Ltd., East Coast Environmental Limited and (Respondents) *(Withdrawn)*

3568-05-U: Scott Fournier (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 663 (Respondent) *(Dimissed)*

3659-05-U: Laurentian University Staff Union ("LUSU") (Applicant) v. Laurentian University Branko Rayakovitch Lisetta Chalupiak (Respondent) *(Terminated)*

3701-05-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Complex Services Inc. (Respondent) *(Withdrawn)*

4164-05-U: Maurice Belanger (Applicant) v. UNITE HERE Ontario Council (Respondent) v. Fleetwood Canada Ltd. (Intervenor) *(Dimissed)*

4220-05-U: Michael Willis (Applicant) v. Labourers' International Union of North America, Local 506 (Respondent) *(Dimissed)*

4231-05-U: Haseeb Mirza (Applicant) v. Teamsters Canada Local 847 (Respondent) v. Goodwill Industries of Toronto (Intervenor) *(Dimissed)*

4270-05-U: Ronald James Peters (Applicant) v. National Automobile, Aerospace, Transportation, and General Workers Union of Canada (CAW-Canada) and its Local 444 (Respondent) v. Windsor Casino Limited (Intervenor) *(Dimissed)*

0336-06-U: Viken Frankian (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent) *(Dimissed)*

0345-06-U: Susan Furniss (Applicant) v. Canadian Union of Public Employees, Local 3022 (Respondent) *(Withdrawn)*

0432-06-U: International Association of Machinists and Aerospace Workers (Applicant) v. Oshawa Community Credit Union Limited (Respondent) v. John A. Remillard (Intervenor) *(Withdrawn)*

0437-06-U: Roy Horace Battiese (Applicant) v. United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 5338 (Respondent) *(Dimissed)*

0548-06-U: International Union of Bricklayers and Allied Craftworkers, Local 2 and Brick and Allied Craft Union of Canada, Local 2 (Applicant) v. BMC Masonry, a Division of 2032686 Ontario Limited (Respondent) *(Withdrawn)*

0570-06-U: Seham Khani (Applicant) v. UNITE HERE (Respondent) v. Coppley Apparel Group (Intervenor) *(Withdrawn)*

0888-06-U: Heldez El Sewify (Applicant) v. CUPE Local 905 (Respondent) v. The Regional Municipality of York (Intervenor) *(Terminated)*

0893-06-U: Dyon Mitchell (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 8773 (Respondent) v. Hendrickson Spring - Stratford Operations (Intervenor) *(Withdrawn)*

0901-06-U: Stephanie Cousins (Applicant) v. CUPE Local 4400 (Respondent) v. Toronto District School Board (Intervenor) *(Withdrawn)*

0930-06-U: Ontario Public Service Employees Union (Applicant) v. Hurley Corporation (Respondent) *(Withdrawn)*

0952-06-U: Patricia Dabbs (Applicant) v. Service Employees International Union Local 1.on (Respondent) v. Roberta Place, A Division of Barrie Long Term Care Centre Inc. (Intervenor) *(Withdrawn)*

1020-06-U: Fernando Alves (Applicant) v. United Steelworkers of America Local 7155 (Respondent) *(Withdrawn)*

1043-06-U: Philip B. Dallaire (Applicant) v. Canadian Union of Public Employees and its Local 1338 (Respondent) v. Waste Management of Canada (Intervenor) *(Withdrawn)*

1079-06-U: Annmarie Satchell (Applicant) v. Ontario Federation of Health Care Workers, Local 1110 (Respondent) v. The Woodhaven (Intervenor) *(Withdrawn)*

1080-06-U: Elaine Hefford (Applicant) v. Ontario Public Service Employees Union (Respondent) v. The Crown in Right of Ontario as represented by the Ministry of Finance (Intervenor) *(Withdrawn)*

1106-06-U: Jacinth Albertha Reynolds (Applicant) v. Service Employees' International Union Local 1.on (Respondent) v. Leisureworld Caregiving Centre - Ellesmere (Intervenor) *(Dimissed)*

1119-06-U: UNITE HERE Ontario Council (Applicant) v. Toronto Dress & Sportswear Manufacturers' Guild (Respondent) *(Withdrawn)*

1122-06-U: Selwyn Jones (Applicant) v. Service Employees International Union Local 1.on (Respondent) v. Leisureworld Caregiving Centre - Richmond Hill (Intervenor) *(Terminated)*

1131-06-U: Firoz Ramji (Applicant) v. UNITE HERE Local 75 (Respondent) *(Dimissed)*

1221-06-U: Larry Smith (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent) *(Dimissed)*

1222-06-U: Kerry Tysick (Applicant) v. Public Service Alliance of Canada Local 000639 (Respondent) *(Withdrawn)*

1293-06-U: Bryan R. Jackson (Applicant) v. Carlos Electric Employees Association (Respondent) v. Carlo's Electric 98 Ltd. (Intervenor) *(Withdrawn)*

1312-06-U: Labourers' International Union of North America, Local 625 (Applicant) v. Paramount Homes Inc., Portofino Corporation and Capaldi Corporation operating as Capaldi Homes and, Dante Capaldi (Respondents) *(Withdrawn)*

1366-06-U: The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 800 (Applicant) v. Patrick Mechanical Limited (Respondent) *(Withdrawn)*

1379-06-U: Nightingale Health Care Inc. (Applicant) v. Service Employees International Union Local 1.on (Respondent) *(Withdrawn)*

1410-06-U: Mary Elizabeth Cowan (Applicant) v. Canadian Union of Public Employees, Local 79 (Respondent) v. City of Toronto (Intervenor) *(Withdrawn)*

1442-06-U: Maricar Baptista (Applicant) v. Universal Workers Union, Labourers' International Union of North America Local 183 (Respondent) *(Withdrawn) (Having regard to the agreement of the parties.)*

1495-06-U: Swing N Scaff Inc. (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 93 and Carpenters District Council of Ontario (Respondent) *(Withdrawn)*

1509-06-U: Labourers' International Union of North America, Local 493 (Applicant) v. William Day Construction Limited (Respondent) *(Withdrawn)*

1590-06-U: Robert Joynt on his own behalf and on behalf of Dale McCabe, John McElroy, Richard Warren and Randy Ricard (Applicant) v. Ontario Public Service Employees Union, The Crown in Right of Ontario Represented by Management Board of Cabinet (Respondents) *(Withdrawn)*

1618-06-U: House of Sophrosyne Union Stewards of Bargaining Unit 631/631A Geri Klingbile Chief Steward Primary Applicant for Bargaining Unit Joanne Park Shop Steward and Cynthia Marron, Shop Steward (Applicant) v. Service Employees International Union, Local 1.on (Respondent) v. House of Sophrosyne (Intervenor) *(Withdrawn) (Having regard to the agreement of the parties.)*

1655-06-U: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Townsgate (Trademark Communities (Ajax) Limited) and/or Haber Homes (1988) Corporation and/or Haber Homes Corporation and/or, Runnymede Ajax Developments Ltd. and/or Trademark Communities (Ajax) Ltd. (Respondents) *(Terminated) (Having regard to the agreement of the parties.)*

1664-06-U: Amanda Marrison (Applicant) v. Power Workers' Union, CUPE Local 1000 - C.L.C. (Respondent) v. Inergi LP (Intervenor) *(Dimissed)*

1789-06-U: Denise E. Teves (Applicant) v. United Steelworkers of America (Respondent) *(Withdrawn)*

1815-06-U: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 463 (Applicant) v. Edward Vaillancourt Plumbing & Heating Limited (Respondent) *(Withdrawn)*

1837-06-U: Pembroke Regional Hospital (Applicant) v. Canadian Union of Public Employees and its Local 1502 (Respondent) *(Withdrawn) (Having regard to the agreement of the parties.)*

2023-06-U: Prewal Balraj, Mehra Aruna, Saini Surinder Kaur (Applicant) v. UNITE Canada Local #192 (Respondent) *(Withdrawn)*

2038-06-U: Ontario Public Service Employees Union (Applicant) v. Aberdeen Gardens Retirement Residence (Respondent) *(Withdrawn)*

2088-06-U: Teamsters Local Union No. 879 (Applicant) v. Peninsula Video and Sound (Respondent) *(Terminated) (Having regard to the agreement of the parties.)*

2179-06-U: Marcia Williams (Applicant) v. Canadian Union of Public Employees and its Local 1590 (Respondent) v. Providence Healthcare (Intervenor) *(Dimissed)*

APPLICATION FOR INTERIM ORDER

2037-06-M: Ontario Public Service Employees Union (Applicant) v. Aberdeen Gardens Retirement Residence (Respondent) *(Withdrawn)*

2089-06-M: Teamsters Local Union No. 879 (Applicant) v. Peninsula Video and Sound (Respondent) *(Terminated)*

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

1662-06-M: Seaforth Creamery Inc. (in Cambridge, Ontario, Canada) (Applicant) v. United Food & Commercial Workers Canada Locals 175 & 633 (Respondent) *(Granted)*

1975-06-M: The Governing Council of the University of Toronto (Applicant) v. Sheet Metal Workers' International Association, Local 30 (Respondent) *(Granted)*

FINANCIAL STATEMENT

0661-06-M: Carol Klue Helen Leoni Kathy Rigby (Applicant) v. Lorne Trevors (Administrator) CUPE Local 1734 (Respondent) *(Withdrawn)*

JURISDICTIONAL DISPUTES

2407-05-JD: International Association of Bridge, Structural and Ornamental Iron Workers, Local 765 (Applicant) v. Aecon Industrial, International Brotherhood of Electrical Workers, Local 115 (Respondents) *(Dimissed)*

3045-05-JD: Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 124 (Applicant) v. Labourers' International Union of North America, Local 1089, Tornado Insulation Ltd. (Respondents) *(Granted)*

3249-05-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union 736 (Applicant) v. Millwrights Regional Council of Ontario and its Local 1007 and, Aecon Industrial, A Division of Aecon Construction Group Inc. (Respondents) *(Granted)*

2261-06-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 700 (Applicant) v. DMW Electrical Instrumentation Inc., International Brotherhood of Electrical Workers, Local 530 (Respondents) *(Withdrawn)*

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

2699-05-M: Ontario Public Service Employees Union and its local 427 (Applicant) v. St. Lawrence Youth Association (Respondent) *(Terminated) (Having regard to the agreement of the parties.)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

2479-05-OH: Ron Turcotte & Ron MacLachlan (Applicant) v. The Corporation of the Township of Nipissing (Respondent) *(Withdrawn)*

1235-06-OH: Shadna Jaisaree (Applicant) v. Broadview Housing Co-operative Inc. (Respondent) *(Withdrawn)*

1236-06-OH: Nancy Hayman (Applicant) v. Coyle's Country Store (Respondent) *(Withdrawn)*

1628-06-OH: Dirk Zandstra (Applicant) v. De Boers Equipment (Respondent) *(Withdrawn)*

CONSTRUCTION INDUSTRY GRIEVANCES

2331-05-G: Operative Plasterers', Cement Masons' and Restoration Steeplejacks International Association of the United States and Canada, Union Local 598 (Applicant) v. C & A Tedesco Waterproofing Inc. (Respondent) v. Sheet Metal Workers' International Association, Local 30 (Intervenor) *(Withdrawn)*

3939-05-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Terra Infrastructure Inc., Clearway Construction Inc. (Respondents) v. Greater Toronto Sewer and Watermain Contractors Association (Intervenor) *(Withdrawn)*

4279-05-G: International Union of Operating Engineers, Local 793 (Applicant) v. Metropolitan Paving & Concrete Inc. (Respondent) *(Endoresed Settlement)*

0458-06-G: Operative Plasterers', Cement Masons', and Restoration Steeplejacks International Association of the United States and Canada, Union Local 598 (Applicant) v. Bravo Cement Contracting London Inc. (Respondent) *(Dimissed)*

0549-06-G: International Union of Bricklayers and Allied Craftworkers, Local 2 (Applicant) v. BMC Masonry, a Division of 2032686 Ontario Limited (Respondent) *(Withdrawn)*

0577-06-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Alberici Constructors Ltd. (Respondent) *(Withdrawn)*

0750-06-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Fernview Construction Limited (Respondent) *(Withdrawn)*

0880-06-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Yustin Interiors Limited and, Deborah Yustin (Respondents) *(Granted)*

1129-06-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Hydro One Networks Inc. (Respondent) *(Dimissed)*

1344-06-G: Universal Workers' Union, L.I.U.N.A. Local 183 (Applicant) v. Furfari Paving Co. Ltd./Furfari Construction Co. Ltd. (Respondent) *(Withdrawn)*

1439-06-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1105945 Ontario Limited c.o.b. as System Drywall & Acoustics (Respondent) *(Endoresed Settlement)*

1455-06-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Advanced Construction Industries Inc. (Respondent) *(Withdrawn)*

1548-06-G: Labourers' International Union of North America, Local 837 (Applicant) v. Antonio Amaral, carrying on business as Active Masonry and Active Masonry Inc. (Respondent) *(Granted)*

1705-06-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. Eagle Welding & Steel Erecting (Respondent) *(Granted)*

1769-06-G: The International Brotherhood of Electrical Workers Local 115 (Applicant) v. Raymond Electric (Respondent) *(Endoresed Settlement)*

1810-06-G: Labourers' International Union of North America, Local 527 (Applicant) v. Arban Stoneworks Ltd. Arban Terrazzo Tile & Marble Ltd. (Respondent) *(Endoresed Settlement)*

1830-06-G: Sheet Metal Workers International Association 562 (Applicant) v. Sutherland-Schultz Inc. (Respondent) *(Withdrawn)*

1864-06-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of Ameirca (Applicant) v. Westwood Drywall Inc. (Respondent) *(Endoresed Settlement)*

1867-06-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Brass Monkey Installations (BMI) Ltd. and, Liszz Palmer (Respondents) *(Endoresed Settlement)*

1881-06-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local 2486 (Applicant) v. Long Valley Construction Limited (Respondent) *(Endoresed Settlement)*

1908-06-G: International Brotherhood of Electrical Workers, Local 530 (Applicant) v. 1230951 Ontario Inc. c.o.b. as Bliant (Respondent) *(Withdrawn)*

1940-06-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Reimar Construction Corporation c.o.b. as Reimar Forming & Construction (Respondent) *(Endoresed Settlement)*

1948-06-G: International Brotherhood of Electrical Workers, Local Union 105 (Applicant) v. Tri-An Electric Ltd. (Respondent) *(Withdrawn)*

1955-06-G: Sheet Metal Workers' International Association, Local 285 (Applicant) v. E-M Air Systems Inc. (Respondent) *(Granted)*

1979-06-G: International Brotherhood of Electrical Workers, Local 1739 (Applicant) v. Clift Electric Inc. (Respondent) *(Terminated)*

1988-06-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Lenwick Building Systems Inc. (Respondent) *(Granted)*

1990-06-G: The International Union of Painters and Allied Trades, Local Union 114 (Applicant) v. 1518049 Ontario Limited o/a Polar Painting & Decorating (Respondent) *(Granted)*

1996-06-G: Universal Workers' Union, L.I.U.N.A. Local 183 (Applicant) v. Vipe Construction (Respondent) *(Endoresed Settlement)*

2000-06-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. L.A. Mechanical Associated Inc. (Respondent) *(Endoresed Settlement) (Having regard to the agreement of the parties.)*

2002-06-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. L.A. Mechanical Associated Inc. (Respondent) *(Endoresed Settlement)*

2005-06-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, District Council of Ontario and its Locals 721 and 736 (Applicant) v. Long Valley Construction Ltd. (Respondent) *(Withdrawn)*

2020-06-G: United Brotherhood of Carpenters and Joiners of America, Local 1256 (Applicant) v. JD Installations (Respondent) *(Granted)*

2060-06-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local 2486 (Applicant) v. CY Rheault Construction Ltd. (Respondent) *(Withdrawn)*

2064-06-G: Construction Workers Union Local 150 affiliated with the Christian Labour Association of Canada (Applicant) v. DC Corex Construction Ltd. (Respondent) *(Granted)*

2076-06-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Southern Arrow Ltd. (Respondent) *(Granted)*

2107-06-G: International Brotherhood of Electrical Workers, Local Union 105 (Applicant) v. Murray Electrical Contracting Inc. (Respondent) *(Withdrawn)*

2160-06-G: Brick and Allied Craft Union of Canada, Local 31 (Applicant) v. Vima Group Inc. (Respondent) *(Granted)*

2165-06-G: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Colossal Interior Systems Inc. (Respondent) *(Granted)*

2171-06-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Terra Discovery Ltd. (Respondent) *(Granted)*

2172-06-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. 833847 Ontario Ltd. cob as EMC Electrical (Respondent) *(Granted)*

2174-06-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. R & B Construction Services Inc. (Respondent) *(Granted)*

2176-06-G: International Union of Bricklayers and Allied Craftworkers, Local 6 (Applicant) v. Vince Ferro Construction Ltd. (Respondent) *(Withdrawn)*

2191-06-G: The International Union of Painters and Allied Trades, Local Union 557 (Applicant) v. Ilias Karakias c.o.b. as Elias Painting & Designs (Respondent) *(Granted)*

2237-06-G: Drywall Acoustic Lathing and Insultation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Emmer Drywall & Acoustics Ltd. and Mark Joseph Emmer (Respondent) *(Withdrawn)*

APPEALS - EMPLOYMENT STANDARDS ACT

0165-04-ES: Luis Guillen (Applicant) v. Dependable Truck & Tank Limited and Director of Employment Standards (Respondents) *(Dimissed)*

3126-04-ES: The Beer Man Inc. (Applicant) v. David Lapensee and Director of Employment Standards (Respondents) *(Withdrawn)*

3158-04-ES: Louie's Pizzeria & Restaurant (Applicant) v. Barbara L. Davis, Vicky MacPherson, Rikki Lee Mondenson, Laura South, Christa Heych, Melissa J. Babcock and Director of Employment Standards (Respondents) *(Dimissed)*

3683-04-ES: Martin Bourke (Applicant) v. Candlelight Communications, Director of Employment Standards (Respondents) *(Dimissed)*

0571-05-ES: Srinivasan Gadam (Applicant) v. 463063 Ontario Inc. Breton Restaurant, Motel and Tavern Ltd. and Gentours Travel (Canada) Inc., Director of Employment Standards (Respondents) *(Granted)*

0627-05-ES: Thunderhouse Forest Services Inc. (Applicant) v. Director of Employment Standards (Respondent) *(Granted)*

0629-05-ES: Thunderhouse Forest Services Inc. (Applicant) v. Director of Employment Standards (Respondent) *(Granted)*

1733-05-ES: Vince Pizzamiglio (Applicant) v. J.H. Ryder Machinery and Director of Employment Standards (Respondents) *(Dimissed)*

3168-05-ES; 3169-05-ES: Luiza Pietrobon, a director of Recycle Plus Ltd. (Applicant) v. Mario Morales, Barry Pilgram, Danyo Mihnev, Ramon Manella, Marcelo Hamu, Wayne Stone, Ken Crilly, Director of Employment Standards (Respondents) *(Dimissed)*

3387-05-ES: 1318706 Ontario Ltd. o/a Cristal's Gentlemen's Club (Applicant) v. Peter LaFreniere, Director of Employment Standards (Respondents) *(Dimissed)*

3727-05-ES: 954052 Ontario Limited o/a Cafe Pierre Philippe Coffee (Applicant) v. Marc Lamoureux and Director of Employment Standards (Respondents) *(Dimissed)*

4023-05-ES: Gordon Baillargeon (Applicant) v. Windsor Raceway Inc. and Director of Employment Standards (Respondents) *(Endoresed Settlement)*

4026-05-ES: Richard Sutton (Applicant) v. Collins Safety and Director of Employment Standards (Respondents) *(Dimissed)*

4097-05-ES: Chaw Saw Man (Applicant) v. Toronto Custom Ornamental Woodworking Inc. and Director of Employment Standards (Respondents) *(Granted)*

4208-05-ES: Hui Zhong Huang o/a R & H Construction Co. Ltd. (Applicant) v. Wei Min Cheung and Director of Employment Standards (Respondents) *(Dimissed)*

4266-05-ES: SB Towing Inc. (Applicant) v. Shane Trecartin and Director of Employment Standards (Respondents) *(Endoresed Settlement)*

4297-05-ES: 2740036 Canada Inc. (Applicant) v. William Murrell and Director of Employment Standards (Respondents) *(Dimissed)*

0005-06-ES: 2029156 Ontario Inc. o/a Econo Gas Bar (Applicant) v. Director of Employment Standards (Respondent) *(Dimissed)*

0168-06-ES: Golden Hanger Cleaners (Applicant) v. Anli Yang and Director of Employment Standards (Respondents) *(Dimissed)*

0196-06-ES; 0197-06-ES: Adam Bailey, a Director of Very Important People Club International Inc. (Applicant) v. Carol Lepp and Director of Employment Standards (Respondents) *(Dimissed)*

0521-06-ES: Lisa Wang (Applicant) v. Very Good News Inc. and Director of Employment Standards (Respondents) *(Granted)*

0582-06-ES: Tae-Hun Jeong (Applicant) v. Fuji-U Japanese Restaurant and Director of Employment Standards (Respondents) *(Dimissed)*

1004-06-ES: Brascon Architectural Products Inc. (Applicant) v. Michelle Lustig and Director of Employment Standards (Respondents) *(Dimissed)*

1148-06-ES: Danielle Doucette (Applicant) v. Sonoma Country Wine Bar & Grill Restaurant and Director of Employment Standards (Respondents) *(Terminated)*

1209-06-ES: Marc Murphy (Applicant) v. Acme Road Builders and Director of Employment Standards (Respondents) *(Dimissed)*

1315-06-ES: 1630735 Ontario Inc. c.o.b. All Type Rubber Rollers (Applicant) v. Wyman Clarke and Director of Employment Standards (Respondents) *(Dimissed)*

1486-06-ES: Tim Willms (Applicant) v. Videojet Technologies Canada Ltd., Director of Employment Standards (Respondents) *(Withdrawn)*

1492-06-ES: Saxcom Canada Inc. (Applicant) v. Kelvin Mahadeo and Director of Employment Standards (Respondents) *(Endoresed Settlement)*

1567-06-ES: Douglas Ford Johnston and Louise Ann Donevan o/a Anchor Marine (Applicant) v. Dennis Gergely and Director of Employment Standards (Respondents) *(Dimissed)*

1573-06-ES: John Zeppieri (Applicant) v. Norlake International Ltd. and Director of Employment Standards (Respondents) *(Withdrawn)*

1651-06-ES: Andre Guindon (Applicant) v. Canadian Auto Parts, Director of Employment Standards (Respondents) *(Withdrawn)*

1676-06-ES: Terry Ramsay (Applicant) v. All Temp Foods and Director of Employment Standards (Respondents) *(Endoresed Settlement)*

1677-06-ES; 1678-06-ES: IBN Inc. (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

1679-06-ES; 1680-06-ES: Landmark Global Financial Corporation (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

1681-06-ES; 1682-06-ES: Serpent River Power Corporation (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

1709-06-ES: Jan Sambor (Applicant) v. Universal Machine Services Inc., and Director of Employment Standards (Respondents) *(Dimissed)*

1737-06-ES: Cassandra Sault (Applicant) v. Native Leasing Services and Director of Employment Standards (Respondents) *(Terminated)*

1740-06-ES: David Beaulieu (Applicant) v. The Corporation of Massey Hall and Roy Thomson Hall and Director of Employment Standards (Respondents) *(Terminated)*

1777-06-ES: Wee Bee Cleanin'! (Applicant) v. Sheri Card and Director of Employment Standards (Respondents) *(Terminated)*

1780-06-ES: Amadeo Flores (Applicant) v. Pinpoint Career Inc. o/a Armor Industrial and Director Of Employment Standards (Respondents) *(Terminated)*

1792-06-ES: Dragan Sucic (Applicant) v. GN Packaging Equipment and Director of Employment Standards (Respondents) *(Dimissed)*

1901-06-ES: Marie-France Laurin (Applicant) v. St. Laurent Textiles Inc., Director of Employment Standards (Respondents) *(Withdrawn)*

1957-06-ES: Jonathan Penner (Applicant) v. 1620262 Ontario Inc. North China Buffet and Director of Employment Standards (Respondents) *(Withdrawn)*

1963-06-ES: 625041 Ontario Limited (Applicant) v. Frank Melegh and Director of Employment Standards (Respondents) *(Terminated)*

1993-06-ES: 2083446 Ontario Ltd. operating as Xtreme Engine Rebuilders (Applicant) v. Vincent Martorino and Director of Employment Standards (Respondents) *(Dimissed)*

2133-06-ES: Jean Stewart (Applicant) v. The Auxiliary to the Cornwall Community Hospital, and Director of Employment Standards (Respondents) *(Dimissed)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

3718-05-HS: Home Depot of Canada Inc. (Applicant) v. Terry Rush et al. and Shawn Thompson, Inspector (Respondents) *(Withdrawn)*

1790-06-HS: Ontario Lottery and Gaming Corporation c.o.b. at Thousand Islands Charity Casino (Applicant) v. Chris Couper and P. Wolters, Inspectors (Respondents) *(Withdrawn)*

1823-06-HS: Andrew Carruthers (Applicant) v. The Pepsi Bottling Group (Canada) and Morris Dutka, Inspector (Respondents) *(Dimissed)*

1826-06-HS: Ambassdor Golf Club Inc. (Applicant) v. Terry Waraich, Inspector (Respondent) *(Dimissed)*

1965-06-HS: Talmolder Inc. (Applicant) v. Thomas MacKay, Inspector (Respondent) *(Withdrawn)*

1991-06-HS: Times Fiber Canada Ltd. (Applicant) v. Stephanie Calvert, Inspector (Respondent) *(Dimissed)*

2056-06-HS; 2057-06-HS: Ministry of Health and Long Term Care (Applicant) v. Ontario Public Service Employees Union and R. Taggart, Inspector (Respondents) *(Withdrawn)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

2488-05-U: UNITE Here Local 75 (Applicant) v. Canadian Niagara Hotels Inc. and Peter Wadsworth, Serey Gonzalo and, Rob the Bouncer (Respondents) *(Dimissed)*

2920-05-U: Graham Wesley Crawford (Applicant) v. Service Employees International Union, Local 1.on (Respondent) v. William Osler Health Centre (Intervenor) *(Dimissed)*

3645-05-ES: Bonnie-Lee Thornton (Applicant) v. 1102741 Ontario Limited carrying on business as The Hargrave Pub, and Director of Employment Standards (Respondents) *(Dimissed)*

3801-05-ES: Amber Vincent (Applicant) v. Group 4 Falck Canada Limited and Director of Employment Standards (Respondents) *(Endoresed Settlement)*

4181-05-U: Joseph Bratulic (Applicant) v. United Food and Commercial Workers International Union, Local 175 and 633 (Respondent) v. Dominion Grocery Store (Intervenor) *(Dimissed)*

1303-06-ES: Ottawa Competitive Construction Inc. (Applicant) v. Patrick Collins and Director of Employment Standards (Respondents) *(Endoresed Settlement)*

1356-06-ES: Custom Specialties Inc. (Applicant) v. Michael Leberge and Director of Employment Standards (Respondents) *(Dimissed)*

1467-06-R: United Brotherhood of Carpenters and Joiners of America, Local 93 (Applicant) v. Broccolini Construction (Ontario) Inc. (Respondent) *(Dimissed)*

1696-06-ES: Vladimir Aiziko, a Director of Vico Health Care (Applicant) v. Miriam Valiente, Sayed Samiullah Hashimy, et al and Director of Employment Standards (Respondents) *(Dimissed)*

APPLICATIONS FOR ACCREDITATION

1113-06-R: Electrical Construction Association of Hamilton Inc. (Applicant) v. International Brotherhood of Electrical Workers, Local 105 (Respondent) *(Granted)*

SECTOR DETERMINATION (SECTION 153) (FORMERLY S.150)

4126-05-M; 4162-05-M: Labourers' International Union of North America and Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Leo Alarie and Sons Limited and Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local 446 (Respondents) v. International Union of Operating Engineers, Local 793, Electrical Power Systems Construction Association, International Brotherhood of Electrical Workers Construction Council of Ontario, Canadian Union of Skilled Workers; International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. Black & McDonald Limited,, Millwright Regional Council of Ontario, United Brotherhood of Carpenters and Joiners of America and its Local 1592,, H.B. White Canada Corp.,, Labourers' International Union of North America, Ontario Provincial District Council, (Respondents) v. Universal Workers Union, LIUNA Local 183, Labourers' International Union of North America, Local 1059, Electrical Power Systems Construction Association, International Brotherhood of Electrical Workers, construction Council of Ontario, Canadian Union of Skilled Workers (Intervenors) *(Granted)*

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING NOVEMBER 2006

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

1166-06-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. E. & E. Seegmiller Limited (Respondent)

Unit: "all construction labourers in the employ of E. & E. Seegmiller Limited in the Counties of Oxford, Perth, Huron, Middlesex, Bruce, and Elgin, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

1409-06-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 2890275 Canada Inc. o/a Ener-Tech (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of 2890275 Canada Inc. o/a Ener-Tech in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of 2890275 Canada Inc. o/a Ener-Tech in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

1949-06-R: Carpenters' Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sola Projects Limited (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Sola Projects Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of Sola Projects Limited in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

1970-06-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Wiens Underground Electric Ltd. (Respondent)

Unit: "all construction labourers, operating engineers and operating engineers' apprentices and those primarily engaged in repairing such equipment in the employ of Wiens Underground Electric Ltd. in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand Norfolk coming within the former County of Haldimand; the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (24 employees in unit)

2334-06-R: International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Fencor Inc. (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of Fencor Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all electricians and electricians' apprentices in the employ of Fencor Inc. in all sectors of the construction industry in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

2380-06-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Sorbara Services Ltd. and/or 1180803 Ontario Ltd. c.o.b. as Orchard Ridge Homes and/or Orchard Ridge Homes (Oshawa) Limited Partnership and/or The Sorbara Group Inc. and/or Sorbara Development Group (Respondent)

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of 1180803 Ontario Ltd. c.o.b. as Orchard Ridge Homes in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

2385-06-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Avery Construction Ltd. (Respondent)

Unit: "all construction labourers in all sectors of the construction construction industry in Board Area 21, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman, and persons covered by the subsisting collective agreement between Avery Construction Ltd. and Labourers International Union of North America, Local 1036" (2 employees in unit)

2386-06-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 1425105 Ontario Inc. o/a Les Burch & Son Contracting (Respondent)

Unit: "all construction labourers in the employ of 1425105 Ontario Inc. o/a Les Burch & Son Contracting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of 1425105 Ontario Inc. o/a Les Burch & Son Contracting in all sectors of the construction industry in that portion of the District of Algoma south of the 49th parallel of latitude, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

2430-06-R: Labourers' International Union of North America, Local 493 (Applicant) v. M & G Fencing Inc. (Respondent)

Unit: "all construction labourers in the employ of M & G Fencing Inc. in all sectors of the construction industry, save and except the industrial, commercial and institutional sector, within a radius of 81 kilometers (approximately 50 miles) of the Timmins Federal Building, save and except non-working foremen and persons above the rank of non working-foreman" (13 employees in unit)

2446-06-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. J.G. Benchmark Corp. (Respondent)

Unit: "all construction labourers in the employ of J. G. Benchmark Corp. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of the J.G. Benchmark Corp. in all sectors of the construction industry in the County of Lennox and Addington, the

County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial an institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

2466-06-R: Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 124 (Applicant) v. Robert Gauvreau & Fils Construction Ltd. (Respondent)

Unit: "all journeyman and apprentice plasterers, spray fibre applicators, drywall tapers and rigid insulation applicators in the employ of Robert Gauvreau & Fils Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all journeyman and apprentice plasterers, spray fibre applicators, drywall tapers and rigid insulation applicators in the employ of Robert Gauvreau & Fils Construction Ltd. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

2510-06-R: Construction Workers Local 52 affiliated with the Christian Labour Association of Canada (Applicant) v. Maple View Electric Co. Ltd. (Respondent)

Unit: "all journeymen electricians and apprentice electricians working for Maple View Electric Co. Ltd. in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville, Halton Hills and Milton in the Regional Municipality of Halton, the Towns of Ajax and Pickering in the Regional Municipality of Durham and the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township) in all sectors of the construction industry save and except non-working foremen and persons above the rank of non-working foreman" (31 employees in unit)

2538-06-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Sele.Com Communications Inc. (Respondent)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Sele.Com Communications Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Sele.Com Communications Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

2552-06-R: Labourers' International Union of North America, Local 1059 (Applicant) v. London & District Concrete Services Ltd. (Respondent)

Unit: "all construction labourers in the employ of London & District Concrete Services Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of London & District Concrete Services Ltd. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce, and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

2591-06-R: Carpenters Union, Central Ontario Regional Council United Brotherhood of Carpenters and Joiners of America (Applicant) v. Wasaga Trim Supply Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Wasaga Trim Supply Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of Wasaga Trim Supply Inc. in all sectors of the construction industry in the County of Grey, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Bargaining Agents Certified Subsequent to Vote

1761-04-R: Labourers' International Union of North America, Local 506 (Applicant) v. D & N Demolition and Construction Services Ltd. (Respondent)

Unit: "all construction labourers in the employ of D & N Demolition and Construction Services Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of D & N Demolition and Construction Services Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (28 employees in unit)

Number of names of persons on revised voters' list	29
Number of persons who cast ballots	26
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	3

1330-05-R: International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Controltech Electrical Inc. (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of Controltech Electrical Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of Controltech Electrical Inc. in all sectors of the construction industry in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

0388-06-R: Labourers International Union of North America, Local 1059 (Applicant) v. 1284316 Ontario Inc. O/A Sentra Contracting (Respondent)

Unit: "all construction labourers in the employ of 1284316 Ontario Inc. O/A Sentra Contracting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of 1284316 Ontario Inc. O/A Sentra Contracting in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1

2062-06-R: International Union of Operating Engineers, Local 793 (Applicant) v. Industrial Ready-Mix Inc. (Respondent)

Unit: "all employees of Industrial Ready-Mix Inc. working in or out of their Ready-Mix operations located in the Municipality of Metropolitan Toronto, Ontario, save and except supervisors and persons above the rank of supervisor, office, clerical and sales staff, quality control personnel, and scale-house personnel and batchers" (28 employees in unit)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

2131-06-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Cadbury Adams Canada Inc. (Respondent)

Unit: "all employees of Cadbury Adams Canada Inc. at 356 Emerald Street North, Hamilton, Ontario, save and except supervisors, those above the rank of supervisor, office and clerical staff" (170 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	197
Number of persons who cast ballots	180
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	142
Number of segregated ballots cast by persons whose names appear on voter's list	31
Number of segregated ballots cast by persons whose names do not appear on voters' list	7
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	101
Number of ballots marked against applicant	40
Number of ballots segregated and not counted	38

2139-06-R: Association of Hebrew School Educators (Applicant) v. Gesher Abraham o/a The Toronto Heschel School (Respondent)

Unit: "all teachers in the employ of Gesher Abraham o/a The Toronto Heschel School in the City of Toronto to deliver curriculum (instruct students), which includes art, gym, library, music and computers; save and except substitute teachers as well as Consultants, Vice-Principal(s), Curriculum Director, Head of School and teachers above those ranks" (55 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	57
Number of persons who cast ballots	49
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	49
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	28
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

2142-06-R: Teamsters Local Union No. 419 (Applicant) v. Economos Canada Inc. (Respondent)

Unit: "all employees of Economos Canada Inc. in the City of Mississauga, Ontario, save and except office, clerical, sales and marketing staff, supervisors and persons above the rank of supervisor" (15 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	2

2185-06-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Villa Colombo Seniors Centre (Vaughan) Inc. (Respondent)

Unit: "all employees of Villa Colombo Seniors Centre (Vaughan) Inc. employed as PSW and RPN's employed at 10443 Highway 27, in the Town of Kleinburg, City of Vaughan, Ontario, save and except supervisors, office and clerical staff and nurses" (4 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

2187-06-R: Retail, Wholesale and Department Store Union, District Council -of the- United Food and Commercial Workers International Union (Applicant) v. Maksons Hospitality Inc. carrying o/a as Best Western (Respondent)

Unit: "all employees of Maksons Hospitality Inc. carrying on o/a as Best Western in the City of Greater Sudbury, save and except Manager and those above the rank of Manager" (10 employees in unit) (Clarity Note) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

2196-06-R: Seafarers' International Union of Canada/ Syndicat international des marins canadiens (Applicant) v. Retirement Residence Operation (REIT) L.P. (Respondent) v. Niagara Health Care & Service Workers Union Local 302 affiliated with the Christian Labour Association of Canada (Local 302, CLAC) (Intervenor)

Unit: "all employees of Retirement Residence Operation (REIT) L.P. in the Town of Fort Erie, save and except department managers (including supervisors), those above the rank of department manager (including supervisor), and Director of Nursing" (34 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	35
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	31
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	24
Number of ballots marked in favour of Intervenor	7
Number of ballots segregated and not counted	1

2205-06-R: Canadian Office and Professional Employees Union, Local 454 (Applicant) v. Changes Recovery Homes (Respondent)

Unit: "all employees of Changes Recovery Homes in the District of Kenora, save and except the Executive Director, Program Manager and the Financial Administrator/Assistant to Executive Director" (17 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

2257-06-R: Ontario Nurses' Association (Applicant) v. VON Perth-Huron (Respondent)

Unit: "all registered nurses and nurses with a Temporary Certificate of Registration employed in a nursing capacity by VON Perth-Huron branch in the City of Stratford and at the satellite office located in Listowel, Ontario (285 Sarah Avenue North), save and except supervisors and persons above the rank of supervisor" (21 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	2

2260-06-R: Ontario Nurses' Association (Applicant) v. Extendicare Southwood Lakes (Respondent)

Unit: "all registered nurses and nurses with Temporary Certificate of Registration engaged in a nursing capacity by Extendicare Southwood Lakes in the City of Windsor, Ontario, save and except Director of Care and persons above the rank of Director of Care" (8 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

2282-06-R: UFCW Canada (Applicant) v. Aramark Canada Ltd. (Respondent)

Unit: "all employees of Aramark Canada Ltd. at Leisureworld located at 835 West Ridge Blvd. In the Town of Orillia and the Region of Simcoe County, save and except supervisors and those above the rank of supervisor, office and clerical" (14 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

2284-06-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Parkway Parking of Canada Ltd. (Respondent)

Unit: "all employees of Parkway Parking of Canada Ltd. in the Municipality of Metropolitan Toronto, save and except Facility Manager, those above the rank of Facility Manager, Loss Prevention and Office and Clerical staff" (27 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

2309-06-R: Service Employees International Union Local 1.on (Applicant) v. 2022574 Ontario Inc. c.o.b. Chartwell Select Riverside Retirement Residence (Respondent)

Unit: "all employees of 2022574 Ontario Inc. c.o.b. Chartwell Select Riverside Retirement Residence in the City of London, save and except supervisors, persons above teh rank of supervisor, maintenance and office and clerical staff" (20 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	0

2339-06-R: Locweld Employees Association (Applicant) v. Locweld Inc. Cornwall (Respondent)

Unit: "any person employed by Locweld Inc. Cornwall plant, in the City of Cornwall, not deemed staff and having completed the probationary period of 720 hours" (27 employees in unit)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names	23

appear on voter's list	
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	23
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

2366-06-R: Canadian Union of Public Employees (Applicant) v. London District Catholic School Board (Respondent)

Unit: "all English as a second language (ESL) Instructors and Literacy Basic Skills (LBS) Instructors employed by the London District Catholic School Board in the City of London, save and except supervisors and persons above the rank of supervisor, and persons employed pursuant to a pre-existing collective agreement" (12 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	2

2392-06-R: Teamsters Local Union No. 938 (Applicant) v. Robinson Solutions (Oshawa) Inc. (Respondent)

Unit: "all employees of Robinson Solutions (Oshawa) Inc. working under a contract with General Motors at the General Motors Plant in the City of Oshawa, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (14 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

2452-06-R: Canadian Union of Public Employees (Applicant) v. Elgin and St. Thomas Housing Corporation (Respondent)

Unit: "all administrative support staff employed by the Elgin and St. Thomas Housing Corporation in the Counties of Elgin and St. Thomas, save and except the Housing Manager/C.E.O. and Manager-Technical Services supervisors and persons above the rank of supervisor." (5 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

2453-06-R: Canadian Union of Public Employees (Applicant) v. The Salvation Army, Peel Family Shelter (Respondent)

Unit: "all employees of The Salvation Army, Peel Family Shelter in the Region of Peel, save and except chaplains, supervisors and persons above the rank of supervisor" (30 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	22
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

2487-06-R: Hospitality & Service Trades Union, Local 261 (Applicant) v. Lewisfoods Incorporated (Respondent)

Unit: "all employees of Lewisfoods Incorporated at its operations at the Royal Canadian Mint at 320 Sussex Drive, in the City of Ottawa, save and except the Manager, Assistant Manager, Chef, Management Trainees and office staff" (4 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

2524-06-R: International Union of Operating Engineers, Local 793 (Applicant) v. Lafarge Canada Inc. (Respondent) v. Communications, Energy and Paperworkers Union of Canada (Intervenor)

Unit: "all employees of Lafarge Canada Inc. at its Terminal in the City of Toronto, save and except foremen, persons above the rank of foreman, office, clerical and technical staff" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked in favour of Intervenor	0
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Without Vote

0352-96-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. LIL Drywall & Acoustics Ltd. (Respondent)

Applications for Certification Dismissed Subsequent to Vote

3706-03-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Fernbrook Homes Ltd. (Respondent) v. Allied Construction Employees Local 1030, United Brotherhood of Carpenters and Joiners of America (Intervenor)

Unit: "all direct employees of Fernbrook Homes Ltd. engaged in on-site construction in the Province of Ontario excluding OLRB Areas #8 and Simcoe County, save and except non-working foremen, persons above the rank of non-working foreman, and persons employed in the industrial, commercial and institutional sector" (8 employees in unit)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	2

1211-06-R: Service Employees International Union Local 1.on (Applicant) v. Nightingale Health Care Inc. (Respondent)

Unit #1: "all employees of Nightingale Health Care Inc. in the City of Toronto, Ontario, save and except Registered Nurses, physiotherapists, occupational therapists, supervisors, or persons above the rank of supervisors and office staff." (172 employees in unit)

Number of names of persons on revised voters' list	176
Number of persons who cast ballots	129
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	123
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	48

Number of ballots marked against applicant	75
Number of ballots segregated and not counted	6
Number of names of persons on revised voters' list	158
Number of persons who cast ballots	107
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	104
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	41
Number of ballots marked against applicant	63
Number of ballots segregated and not counted	3

1872-06-R: UNITE HERE (Applicant) v. Giftcraft Ltd. (Respondent)

Unit: "all employees of Giftcraft Ltd. in the City of Brampton, save and except office staff, sales staff, supervisors and those above the rank of supervisor" (147 employees in unit)

Number of names of persons on revised voters' list	156
Number of persons who cast ballots	161
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	111
Number of segregated ballots cast by persons whose names appear on voter's list	39
Number of segregated ballots cast by persons whose names do not appear on voters' list	11
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	41
Number of ballots marked against applicant	88
Number of ballots segregated and not counted	32

2170-06-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647 (Applicant) v. Jack Larabie Distribution Inc. (Respondent)

Unit: "all employees of Jack Larabie Distribution Inc. working in and out of Ottawa, Ontario, save and except office, clerical and sales staff, employees regularly employed for less than 24 hours per week, supervisors and those above the rank of supervisor" (15 employees in unit)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	7

2250-06-R: Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880 (Applicant) v. Lakeshore Fire Department (Respondent)

Unit: "all volunteer firefighters of the responding party, save and except District Chiefs and persons above the rank of District Chief" (95 employees in unit)

Number of names of persons on revised voters' list	95
Number of persons who cast ballots	81
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	80
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	22
Number of ballots marked against applicant	57
Number of ballots segregated and not counted	1

2355-06-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Stackpole Limited (Respondent)

Unit: "all employees of Stackpole Limited in it's automotive gear division in the City of Mississauga save and except supervisors, persons above the rank of supervisor, office and clerical, sales, engineering and technical staff." (400 employees in unit)

Number of names of persons on revised voters' list	397
Number of persons who cast ballots	380
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	373
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	7
Number of spoiled ballots	4
Number of ballots marked in favour of applicant	181
Number of ballots marked against applicant	188
Number of ballots segregated and not counted	7

2357-06-R: Canadian Union of Public Employees (Applicant) v. Sandfield Place (Respondent)

Unit: "all employees employed at Sandfield Place in the City of Cornwall, Ontario, save and except Registered Nurses, supervisors and persons above the rank of supervisor" (60 employees in unit)

Number of names of persons on revised voters' list	60
Number of persons who cast ballots	52
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	52
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	36
Number of ballots segregated and not counted	0

2387-06-R: Communications, Energy and Paperworkers Union of Canada, Local 100G (Applicant) v. Quebecor World Richmond Hill (Division of Quebecor World Inc.) (Respondent)

Unit: "all employees of Quebecor World Richmond Hill (A Division of Quebecor World Inc.) in the Maintenance Department at its facility in the Town of Richmond Hill, in the Municipality of York, in the Province of Ontario, save and except lead hands and persons above the rank of lead hand." (10 employees in unit)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

2535-06-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Fastenal Canada Company (Respondent)

Unit: "all employees of Fastenal Canada Company in the City of Kitchener, save and except managers, assistant managers, office, clerical, sales, purchasing, students and co-op students" (48 employees in unit)

Number of names of persons on revised voters' list	44
Number of persons who cast ballots	39
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	38
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	24
Number of ballots segregated and not counted	1

Applications for Certification Withdrawn

2821-05-R; 2822-05-R; 2961-05-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Insituform Technologies Limited (Respondent)

3559-05-R; 4278-05-R: Labourers' International Union of North America Ontario Provincial District Council (Applicant) v. 1230995 Ontario Inc. (Respondent) v. International Union of Operating Engineers, Local 793 (Intervenor)

1250-06-R: Labourers' International Union of North America, Local 506 (Applicant) v. Greyfield Construction Co. Ltd. (Respondent) *(Having regard to the agreement of the parties.)*

2310-06-R: UFCW Canada (Applicant) v. Innvest Htls GP IV c.o.b. as Downsview Comfort Inn (Respondent)

2317-06-R: The Canadian Union of Public Employees (Applicant) v. Markham Stouffville Hospital (Respondent)

2318-06-R: Canadian Union of Public Employees (Applicant) v. Women's Own Withdrawal Management (University Health Network) (Respondent)

2328-06-R: Service Employees International Union Local 2.on Brewery, General and Professional Workers' Union (Applicant) v. The Salvation Army Windsor Community and Rehabilitation Centre (Respondent)

2377-06-R: Southwestern Ontario Health Care and Service Workers Union, Local 303 affiliated with Christian Labour Association of Canada (Applicant) v. Millennium Teleservices of Canada, Co. (Respondent)

2493-06-R: International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local 822 (Applicant) v. The National Ballet of Canada (Respondent)

2509-06-R: Canadian Union of Public Employees (Applicant) v. Providence Continuing Care Centre - Providence Manor Site (Respondent) v. The Canadian National Federation of Independent Unions (Intervenor)

2523-06-R: Teamsters Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers (Applicant) v. ICI Canada Inc. (Respondent)

FIRST AGREEMENT - DIRECTION

0363-06-FC: UFCW Canada (Applicant) v. Ride Management Ltd. (Respondent) *(Terminated)*

2265-06-FC: CAW-Canada and its Local 222 (Applicant) v. Durham Region Transit Commission (Regional Municipality of Durham) (Respondent) *(Withdrawn)*

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

0530-02-R; 0551-04-R: Labourers' International Union of North America (Applicant) v. Ontario Power Generation Inc. and, New Horizon System Solutions Inc. (Respondents); Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 1059 (Applicant) v. Ontario Power Generation Inc. and, New Horizon System Solutions Inc. (Respondents) *(Endorsed Settlement)*

3659-02-R: The Millwright Regional Council of Ontario, United Brotherhood of Carpenters and Joiners of America, and its Local 1916 (Applicant) v. Industrial Redi-Works Inc. and, Resource Industrial Group (RIG) (Respondents) *(Granted)*

2433-03-R: The Millwright Regional Council of Ontario, United Brotherhood of Carpenters and Joiners of America, and its Local 1916 (Applicant) v. Industrial Redi-Works Inc. and, Ideal Industrial Contractors Inc. (Respondents) *(Granted)*

3693-05-R: International Union of Operating Engineers, Local 793 (Applicant) v. D. Lafreniere Builders Ltd., Jarnel Contracting and, Falberg Enterprises Ltd. (Respondents) *(Withdrawn)*

0913-06-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Principle Mechanical Services Inc., Atlantic HVAC Systems Ltd. (Respondents) *(Granted)*

1375-06-R: United Brotherhood of Carpenters and Joiners of America, Local Union 2486 (Applicant) v. Ruggles Construction, a Division of Ruggles Sales & Service Limited and, Incon Construction Ltd. (Respondents) *(Withdrawn)*

SALE OF A BUSINESS

0530-02-R; 0551-04-R: Labourers' International Union of North America (Applicant) v. Ontario Power Generation Inc. and, New Horizon System Solutions Inc. (Respondents); Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 1059 (Applicant) v. Ontario Power Generation Inc. and, New Horizon System Solutions Inc. (Respondents) *(Endorsed Settlement)*

3659-02-R: The Millwright Regional Council of Ontario, United Brotherhood of Carpenters and Joiners of America, and its Local 1916 (Applicant) v. Industrial Redi-Works Inc. and, Resource Industrial Group (RIG) (Respondents) *(Granted)*

2433-03-R: The Millwright Regional Council of Ontario, United Brotherhood of Carpenters and Joiners of America, and its Local 1916 (Applicant) v. Industrial Redi-Works Inc. and, Ideal Industrial Contractors Inc. (Respondents) *(Granted)*

4115-03-R: Ontario Public Service Employees Union (Applicant) v. Windsor Regional Hospital; Cancer Care Ontario;, The Professional Institute of the Public Service of Canada; and, National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada) (Respondents) *(Dismissed)*

3334-05-R: Canadian Union of Public Employees (Applicant) v. COSTI, York Catholic District School Board and, Toronto Catholic District School Board (Respondents) *(Withdrawn)*

3693-05-R: International Union of Operating Engineers, Local 793 (Applicant) v. D. Lafreniere Builders Ltd., Jarnel Contracting and, Falberg Enterprises Ltd. (Respondents) *(Withdrawn)*

0799-06-R: Rainy River District Social Services Administration Board ("RRDSSAB") (Applicant) v. Canadian Union of Public Employees and its Local 4807 ("CUPE") and, National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 229 ("CAW") (Respondents) *(Granted)*

0913-06-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Principle Mechanical Services Inc., Atlantic HVAC Systems Ltd. (Respondents) *(Granted)*

1375-06-R: United Brotherhood of Carpenters and Joiners of America, Local Union 2486 (Applicant) v. Ruggles Construction, a Division of Ruggles Sales & Service Limited and, Incon Construction Ltd. (Respondents) *(Withdrawn)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

2073-06-R: Ed Yaroscavitch (Applicant) v. United Brotherhood of Retail, Food, Industrial & Service Trades International Union (Respondent) *(Granted)*

Unit: "all employees of Admiral Inns in Burlington, Ontario, save and except supervisors, managers, and persons above the rank of supervisor, manager, office, clerical and sales staff" (14 employees in unit)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	13
Number of ballots segregated and not counted	6

2379-06-R: William Hallett and Patricia Morin (Applicant) v. Canadian Union of Public Employees (Respondent) *(Granted)*

Unit: "all employees of the Cochrane and Area Community Development Corporation working at the Polar Bear Habitant and Heritage Village." (13 employees in unit)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	7
Number of ballots segregated and not counted	0

2399-06-R: Maura J. Perna (Applicant) v. Service Employees International Union Local 1.on (Respondent) *(Withdrawn)*

2462-06-R: Gurmat Singh Sangha (Applicant) v. Teamsters Local Union 938 (Respondent) v. Patrolman Security Services Inc. (Intervenor) *(Granted)*

2488-06-R: Gary Armstrong (Applicant) v. Teamsters Local Union 938 (Respondent) v. Gen-Auto Shippers Limited Oshawa (Intervenor) *(Dismissed)*

2511-06-R: Tanya Anger (Applicant) v. CAW-Canada and its Local 448 (Respondent) v. 1353772 Ontario Limited c.o.b. as Tim Hortons (Intervenor) *(Granted)*

2695-06-R: Mike Benard, on his own behalf and on behalf of a group of employees of UAP/NAPA Ottawa Distribution Center (Applicant) v. CAW, Local 641 (Respondent) v. UAP/NAPA Ottawa Distribution Center (Intervenor) *(Granted)*

REFERRAL FROM MINISTER (SECTION 115 FORMERLY SECT 109)

1226-06-M: CAW-Canada Local 199 (Applicant) v. Coutts Library Services Canada (Respondent) *(Granted)*

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

2403-06-U: Guelph Wellington Women in Crisis (Applicant) v. Canadian Union Public Employees and its Local 4393 and Jill Smyth and Grace Peters and Kim Kennedy and Teresa Preski and Rachelle Hasson and Carol Death and Debbie Hawkins and Kym-Su Matheson in their individual capacity and their capacity as Officers, Officials and Agents of Canadian Union Public Employees and its Local 4393 (Respondent) *(Withdrawn)*

COMPLAINTS OF UNFAIR LABOUR PRACTICE

2672-03-U: Ray Canale (Applicant) v. International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists Allied Crafts of the United States, its Territories and Canada, Local 873 (Respondent) *(Dismissed)*

1808-04-U: Labourers' International Union of North America, Local 506 (Applicant) v. D & N Demolition and Construction Services Ltd. (Respondent) *(Dismissed)*

2740-04-U: Central Ontario Regional Council of Carpenters, Drywall and Allied Workers United Brotherhood of Carpenters and Joiners of America (Applicant) v. Lifetime Homes (Respondent) *(Withdrawn)*

3662-04-U: Clinton Sopha (Applicant) v. Hotel Employees Restaurant Employees Union Local Local 280, Hotel Employees Restaurant Employees Union Local 75, Hotel Hospitality & Casino Workers Union and (Respondents) v. Woodbine Entertainment Group (Intervenor) *(Withdrawn)*

2190-05-U: Morgan N. McColl (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Respondent) *(Dismissed)*

3477-05-U: Debra Campbell (Applicant) v. International Association of Machinists and Aerospace Workers (Respondent) v. GKN Walterscheid Inc. (Intervenor) *(Withdrawn)*

3580-05-U: Teamsters Local Union No. 419 (Applicant) v. Toronto Humane Society (Respondent) *(Withdrawn)*

3597-05-U: Eugeniusz Gorski (Applicant) v. Sheet Metal Workers' International Association, Local 504 (Respondent) v. Douro Roofing & Sheet Metal Contractors Ltd. (Intervenor) *(Dismissed)*

3608-05-U: 1647031 Ontario Ltd. o/a S.L.R. Roofing and Sheet Metal (Applicant) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Robert Shewell, 6221220 Canada Inc. o/a Jim's Roofing and Jim LeBlanc (Respondent) *(Dismissed)*

3849-05-U: Maurice LaRose (Applicant) v. Teamsters Local Union 91 (Respondent) v. Loblaws Companies East (Intervenor) *(Dismissed)*

3916-05-U: Melat Negussie Minalu and Qianyi (Cindy)Tan (Applicant) v. United Food and Commercial Workers Canada, Local 1000A (Respondent) v. Power Packaging Company (Intervenor) *(Dismissed)*

4100-05-U: Barry Brown (Applicant) v. CAW Local 1995 (Respondent) *(Dismissed)*

4127-05-U: Sandra Sharlene Samuels (Applicant) v. CUPE Local 966 (Respondent) *(Dismissed)*

4191-05-U: Labourers' International Union of North America Ontario Provincial District Council (Applicant) v. 1230995 Ontario Inc. o/a Badger Daylighting (Respondent) *(Withdrawn)*

0109-06-U: UFCW Canada (Applicant) v. Ride Management Ltd. (Respondent) *(Withdrawn)*

0265-06-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Maxtech Precision Products, a division of Maxtech Manufacturing Inc. (Respondent) *(Withdrawn)*

0569-06-U: Ty Vo (Applicant) v. Canadian Auto Workers Local 444 (Respondent) v. Windsor Casino Limited (Intervenor) *(Dismissed)*

0734-06-U: Kyle Brushett (Applicant) v. CAW Local 414 (Respondent) v. The Great Atlantic & Pacific Company of Canada (Intervenor) *(Withdrawn)*

0995-06-U: Paul O'Connor (Applicant) v. The Crown in Right of Ontario (Ministry of Finance) (Respondent) v. Ontario Public Service Employees Union ("OPSEU") (Intervenor) *(Dismissed)*

1168-06-U: Amelita Del Rio (Applicant) v. CUPE Local 4191 (Respondent) v. Trillium Health Centre (Intervenor) *(Withdrawn)*

1253-06-U: Ontario Public Service Employees Union (Applicant) v. The Corporation of the Township of Georgian Bay (Respondent) *(Withdrawn)*

1271-06-U: CAW-Canada and its Local 222 (Applicant) v. Durham Region Transit Commission (Regional Municipality of Durham) (Respondent) *(Withdrawn)*

1311-06-U: Meaghan Kessler (Applicant) v. Ontario Nurses' Association (ONA), Local 75 (Respondent) v. St. Joseph's Healthcare (Intervenor) *(Withdrawn)*

1393-06-U: Pierre Ferri (Applicant) v. CAW-Canada, Local 973 (Respondent) v. Coca-Cola Bottling Company (Intervenor) *(Withdrawn)*

1395-06-U: Canadian Office and Professional Employees Local 225 (Applicant) v. Canadian Labour Congress (Respondent) *(Withdrawn)*

1419-06-U: Ontario Public Service Employees Union (Applicant) v. Peel & Halton Acquired Brain Injury Services (Respondent) *(Withdrawn)*

1457-06-U: Firoz Ramji (Applicant) v. UNITE HERE Local 75 (Respondent) *(Dismissed)*

1459-06-U: Jim Dreyer (Applicant) v. Teamsters Local Union No. 230 (Respondent) v. Millwork Home Centre (Intervenor) *(Withdrawn)*

1478-06-U: Steven C. Smith, Ph.D. (Applicant) v. Algoma University Faculty Association (Respondent) v. Algoma University College (Intervenor) *(Dismissed)*

1512-06-U: Linda Smith (Applicant) v. Woodbine Entertainment Group (Respondent) *(Withdrawn)*

1513-06-U: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 2890275 Canada Inc. o/a Ener-Tech (Respondent) *(Withdrawn)*

1559-06-U: John Miller (Applicant) v. Woodbine Entertainment Group (Respondent) *(Withdrawn)*

1626-06-U: Rusty Barron (Applicant) v. CUPE Local 1734 (Respondent) *(Withdrawn)*

1647-06-U: Kathy Gillis (Applicant) v. United Food & Commercial Workers Union, Local 175 (Respondent) v. Valbay Hotel Limited c.o.b. as Valhalla Inn (Intervenor) *(Dismissed)*

1719-06-U: Richard Socha (Applicant) v. United Food and Commercial Workers Canada, Local 1000A (Respondent) *(Dismissed)*

1773-06-U: Ryan Birrell (Applicant) v. Canadian Union of Public Employees and its Local 3261 (Respondent) v. The Governing Council of the University of Toronto (Intervenor) *(Dismissed)*

1967-06-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Ducana Window & Doors Ltd. (Respondent) *(Withdrawn)*

2050-06-U: Paul Lefebvre (Applicant) v. CUPE Local 3251 (Respondent) *(Withdrawn)*

2111-06-U: Ron Atkinson (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) Local 112 (Respondent) *(Dismissed)*

2115-06-U: Canadian Union of Public Employees, Local 3902 (Applicant) v. The Governing Council of the University of Toronto (Respondent) *(Withdrawn)*

2153-06-U: United Food and Commercial Workers International Union, Local 206 (Applicant) v. Sheprott K/9 Security Inc. (Respondent) *(Withdrawn)*

2224-06-U: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Bulk Barn Foods Limited (Respondent) *(Withdrawn)*

2225-06-U: Murray Wentzell (Applicant) v. Teamsters Union Local 938 (Respondent) *(Dismissed)*

2289-06-U: Construction Workers Union Local 150 affiliated with the Christian Labour Association of Canada (Applicant) v. DC Corex Construction Inc. (Respondent) *(Granted)*

2405-06-U: The Canadian Film and Television Production Association (Applicant) v. The Alliance of Canadian Cinema, Television and Radio Artists (Respondent) *(Withdrawn)*

2420-06-U: Teamsters Local Union No. 938 (Applicant) v. Stock Transportation Ltd. (Respondent) *(Terminated)*

2549-06-U: Labourers' International Union of North America, Ontario Provincial District Council, and Labourers' International Union of North America, Local 1059 (Applicant) v. 1614818 Ontario Inc., c.o.b. as Postma Concrete Forming (Respondent) *(Terminated)*

2644-06-U: Pamela J. Abbott (Applicant) v. Ontario Provincial Police Association (Respondent) *(Dismissed)*

APPLICATION FOR INTERIM ORDER

1787-06-M; 1819-06-M: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Shane Baghai Construction Contracting Inc. and, Shane Baghai Homes Inc. and Baghai Development Limited (Respondents) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervenor); Baghai Development Limited (Applicant) v. Universal Workers Union, Labourers' International Union Of North America Local 183 (Respondent) *(Withdrawn)*

2029-06-M: United Brotherhood of Carpenters and Joiners of America, Local 2000 (Applicant) v. Alaska Sash Door and Window Corp. Ltd. o/a Alaska Wood Industries (Respondent) *(Granted)*

2447-06-M: Teamsters Local Union No. 938 (Applicant) v. Stock Transportation Ltd. (Respondent) *(Terminated)*

2465-06-M: Labourers International Union of North America, Local 837 (Applicant) v. McMaster University (Respondent) v. Drake International Inc. (Intervenor) *(Withdrawn)*

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

2193-06-M: Fortino's Supermarket Ltd. (Applicant) v. United Food & Commercial Workers Canada Locals 175 & 633 (Respondent) *(Granted)*

2345-06-M: United Food & Commercial Workers Canada Local 175 (Applicant) v. Dresden Industrial (Respondent) *(Granted)*

TRUSTEESHIP

3555-05-T: Canadian Union of Public Employees (Applicant) v. Canadian Union of Public Employees, Local 4374 (Respondent) *(Granted)*

JURISDICTIONAL DISPUTES

3244-05-JD: The Ontario Council of the International Union of Painters and Allied Trades (Applicant) v. Bruce Power LP (Respondent) v. International Association of Heat and Frost Insulators and Asbestos Workers Local 95 (Intervenor) *(Withdrawn)*

0419-06-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and its Local 759 (Applicant) v. Black & McDonald Limited, International Brotherhood of Electrical Workers, Local 402 (Respondents) v. Electrical Power Systems Construction Association (Intervenor) *(Dismissed)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

2931-05-OH: Peter L. Petran (Applicant) v. Wal-Mart (Respondent) *(Withdrawn)*

0019-06-OH: Kashif Choudhry (Applicant) v. Standard Auto Wreckers (Respondent) *(Withdrawn)*

0587-06-OH: Stanley Czerniak (Applicant) v. Ministry of Community Safety and Correctional Services (Respondent) *(Dismissed)*

1627-06-OH: Lyn B. Viner (Applicant) v. U-Haul Canada (Respondent) *(Terminated)*

1674-06-OH: Kurt Zeng (Applicant) v. Rumball Excavation and Haulage (Respondent) *(Terminated)*

1976-06-OH: Ana Romero (Applicant) v. Ambassador Building Maintenance Limited (Respondent) *(Withdrawn)*

2042-06-OH: Aaron Ballantyne (Applicant) v. Nicayne Metal Processing (Respondent) *(Withdrawn)*

2065-06-OH: Keith O'Donnell (Applicant) v. Fleetwood Metal Industries (Respondent) *(Withdrawn)*

2506-06-OH: Christopher Graham Boutilier (Applicant) v. Hulleman Industries (Respondent) *(Dismissed)*

CONSTRUCTION INDUSTRY GRIEVANCES

4105-05-G: Labourers' International Union of North America, Local 493 (Applicant) v. Interpaving Ltd. (Respondent) *(Withdrawn)*

0983-06-G: Labourers' International Union of North America, Local 493 (Applicant) v. RM Belanger Limited (Respondent) *(Withdrawn)*

1003-06-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers on its own behalf and on behalf of its Locals 721 and 736 (Applicant) v. Bison Enterprises (Respondent) *(Endorsed Settlement)*

1453-06-G: United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. Strabag Inc., Electrical Power Systems Construction Association, Ontario Power Generation Inc. (Respondents) *(Dismissed)*

1532-06-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and Iron Workers District Council of Ontario and its Local 721 (Applicant) v. Eagle Welding & Steel Erecting (Respondent) *(Granted)*

1539-06-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Gambi Group Inc. a.k.a. Gambi Industries Inc. (Respondent) *(Granted)*

1799-06-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. 1309872 Ontario Inc. c.o.b. as IC Mechanical (An Unregistered Business Name) (Respondent) *(Granted)*

1863-06-G: Drywall Acoustic Lathing and Insulation, Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Whitmore Interiors Inc. (Respondent) *(Endorsed Settlement)*

1887-06-G: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Alcom Group Inc. (Respondent) *(Withdrawn)*

1938-06-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. 1353015 Ontario Ltd. c.o.b. as Nortech Drywall & Plastering (Respondent) *(Granted)*

1973-06-G: Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 124 (Applicant) v. Sapacon Drywall Limited (Respondent) *(Terminated)*

2108-06-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Furtive Networks In (Respondent) *(Withdrawn)*

2109-06-G: International Brotherhood of Electrical Workers, Local Union 120 (Applicant) v. Furtive Networks Inc. (Respondent) *(Withdrawn)*

2110-06-G: International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Furtive Networks Inc. c.o.b. as Demarcation Point (Respondent) *(Withdrawn)*

2156-06-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Tagus Electrical Contractors Inc. (Respondent) *(Endorsed Settlement)*

2157-06-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Standard Electric (Toronto 1985) Inc. (Respondent) *(Endorsed Settlement)*

2177-06-G: The International Union of Painters and Allied Trades, Local Union 114 (Applicant) v. Yury Pyuro c.o.b. as El Decor (Respondent) *(Withdrawn)*

2178-06-G: The International Union of Painters and Allied Trades, Local Union 557 (Applicant) v. El Decor Ltd. (Respondent) *(Endorsed Settlement)*

2186-06-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Electri Can Electrical Contractors (Respondent) *(Granted)*

2192-06-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Vima Group Inc. (Respondent) *(Granted)*

2218-06-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) *(Withdrawn)*

2220-06-G: International Union of Operating Engineers, Local 793 (Applicant) v. World Wide Drain Corporation (Respondent) *(Granted)*

2233-06-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Fortese Concrete Ltd. (Respondent) *(Withdrawn)*

2234-06-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Yukon Construction Inc. and, Oreste Perruzza (Respondents) *(Endorsed Settlement)*

2235-06-G: Carpenters' Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Yukon Construction Inc. (Respondent) *(Endorsed Settlement)*

2236-06-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Yustin Interiors Limited (Respondent) *(Granted)*

2255-06-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Vanbet Services Inc. (Respondent) *(Granted)*

2279-06-G: Labourers' International Union of North America, Local 506 (Applicant) v. Murray Demolition Corp. (Respondent) *(Withdrawn)*

2300-06-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Star West Plaster & Cement Finishing Ltd. (Respondent) *(Withdrawn)*

2319-06-G: International Union of Operating Engineers, Local 793 (Applicant) v. P.R.W. Excavating Contractors Ltd. (Respondent) *(Granted)*

2331-06-G: Brick and Allied Craft Union of Canada Local 28 (Applicant) v. RHI Canada Inc. (Respondent) *(Endorsed Settlement)*

2394-06-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 221 (Applicant) v. Mechanical Pipe Systems (Kingston) Ltd. (Respondent) *(Endorsed Settlement)*

2396-06-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93 (Applicant) v. Joe Da Silva c.o.b. as JD Installations/JD Cold Rooms (Respondent) *(Granted)*

2406-06-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 834 (Applicant) v. Stel-Alco Ltd. (Respondent) *(Endorsed Settlement)*

2407-06-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 834 (Applicant) v. Vision Almet (Respondent) *(Endorsed Settlement)*

2482-06-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 67 (Applicant) v. Adam Clark Company Limited (Respondent) *(Withdrawn)*

2504-06-G: Central Ontario Regional Council of Carpenters, Drywall and Allied Workers, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Frank Slywka c.o.b. as Leyland Construction (Respondent) *(Withdrawn)*

2529-06-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Oban Electric Limited (Respondent) *(Granted)*

2546-06-G: Sheet Metal Workers' International Association, Local 285 (Applicant) v. Design Ventilation Inc. (Respondent) *(Granted)*

2547-06-G: Sheet Metal Workers' International Association, Local 285 (Applicant) v. PM Sheet Metal & Ventilation Ltd. (Respondent) *(Withdrawn)*

2584-06-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Cyber Electric Inc. (Respondent) *(Granted)*

2630-06-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Superior Stucco and Drywall Inc. (Respondent) *(Granted)*

APPEALS - EMPLOYMENT STANDARDS ACT

3354-04-ES: Sum Lee, a Director of 1183260 Ontario Inc. o/a Sam Woo BBQ Restaurant (Applicant) v. Bo Yim Fok, et al and, Qui Fun Pan, Director of Employment Standards (Respondents) *(Withdrawn)*

3380-04-ES: Bo Yim Fok, et al (Applicant) v. 1183260 Ontario Inc. o/a Sam Woo BBQ Restaurant, et al, and, Qui Fun Pan, Director of Employment Standards (Respondents) *(Withdrawn)*

3923-04-ES: Ying Hing Poon, a Director of 1183260 Ontario Inc. o/a Sam Woo BBQ Restaurant (Applicant) v. Bo Yim Fok, et al and, Qui Fun Pan, Director of Employment Standards (Respondents) *(Withdrawn)*

2571-05-ES: William Forlippa (Applicant) v. 1291094 Ontario Ltd. o/a AV Car Sales and Service, Director of Employment Standards (Respondents) *(Granted)*

2789-05-ES: Reburg Holdings Limited o/a Al's Yellow Cab (Applicant) v. Gilroy Miller and Director of Employment Standards (Respondents) *(Dismissed)*

2894-05-ES: Alfredo Jorge Sapp (Applicant) v. Reliable Maintenance and, Director of Employment Standards (Respondents) *(Dismissed)*

2901-05-ES: Service Plus Aquatics Inc. (Applicant) v. Jesse Clarke, Director of Employment Standards (Respondents) *(Granted)*

2988-05-ES: Grand & Toy Limited (Applicant) v. Director of Employment Standards (Respondent) *(Granted)*

3579-05-ES: Lisa Marie Street o/a Stepping Stones Therapy Services (Applicant) v. Lisa Faber and Director of Employment Standards (Respondents) *(Terminated)*

3773-05-ES: Patrick Dean (Applicant) v. Whistler's Restaurant and Director of Employment Standards (Respondents) *(Dismissed)*

0034-06-ES: Erin McKenna (Applicant) v. Ambiance and, Director of Employment Standards (Respondents) *(Dismissed)*

0428-06-ES: Angie Brewster (Applicant) v. Concord Fireplaces Inc. and Director of Employment Standards (Respondents) *(Terminated)*

0596-06-ES: James Walker (Applicant) v. Ikon Office Solutions Inc. and Director of Employment Standards (Respondents) *(Withdrawn)*

0628-06-ES: Zorka Lopoyda (Applicant) v. Compass Group Canada, Director of Employment Standards (Respondents) *(Withdrawn)*

0760-06-ES: 1240277 Ontario Inc. o/a Fanny's Adult Entertainment (Applicant) v. Angel Janveau and Director of Employment Standards (Respondents) *(Granted)*

0766-06-ES: Bogdan Pachinski (Applicant) v. F & M Signs Limited, Director of Employment Standards (Respondents) *(Withdrawn)*

0769-06-ES: Devendranauth Misir, a Director of Integrated Health Care Services o/a Bay-Wellesley Medical Services and Walk-In Clinic Inc. (Applicant) v. Mulunesh F. Agago, Joan A Blagrove, Rosa Dalia Burbano, Ruth M. Carbajal, Doreen A. Emanuel, Libanos Getachew, Maria Delia Manzano-Gimenez, Helen Rezendes-Medeiros, Roslyn Singer, Donna Sutherland, Evelyn T. Tuazon, Amsale Worku, Edith Molna, Director of Employment Standards (Respondents) *(Dismissed)*

0786-06-ES: Mario Di Santo (Applicant) v. Canadian Bonded Credits Limited and Director of Employment Standards (Respondents) *(Dismissed)*

0985-06-ES: Lethem Burnett (Applicant) v. Abraham Katryan and Director of Employment Standards (Respondents) *(Withdrawn)*

1024-06-ES: Percy A. McBride Ltd. (Applicant) v. Stephen Sax and Director of Employment Standards (Respondents) *(Dismissed)*

1071-06-ES: Lisa Druer (Applicant) v. A.P. Plasman Inc. and Director of Employment Standards (Respondents) *(Withdrawn)*

1124-06-ES: Serge Lavergne (Applicant) v. Service Plus Aquatics Inc. and Director of Employment Standards (Respondents) *(Dismissed)*

1146-06-ES: Jason Defreitas (Applicant) v. Eggspectation Greater Toronto Area and Director of Employment Standards (Respondents) *(Withdrawn)*

1430-06-ES: John William France (Applicant) v. Barry Humphrey Enterprises Limited o/a Mike's Auto Parts and Director of Employment Standards (Respondents) *(Granted)*

1671-06-ES: Yvonne Gilkes o/a Community Taxi (Applicant) v. Ernest Smith and Director of Employment Standards (Respondents) *(Dismissed)*

1926-06-ES: 2026709 Ontario Inc. cob R.U. International (Applicant) v. Natalya Willy and Director of Employment Standards (Respondents) *(Terminated)*

1927-06-ES: 2026709 Ontario Inc. cob R.U. International (Applicant) v. Natalya Willy and Director of Employment Standards (Respondents) *(Terminated)*

2051-06-ES; 2052-06-ES; 2053-06-ES: Forever Young Spa & Wellness Centre Inc. (Applicant) v. Lori Wallace, Director of Employment Standards (Respondents); Forever Young Spa & Wellness Centre Inc. (Applicant) v. Lisa Marlowe, Director of Employment Standards (Respondents); Forever Young Spa & Wellness Centre Inc. (Applicant) v. Terry Tassone, Director of Employment Standards (Respondents) *(Dismissed)*

2082-06-ES; 2083-06-ES; 2084-06-ES: Forever Young Spa & Wellness Centre Inc. (Applicant) v. Melissa Crane, and, Director of Employment Standards (Respondents); Forever Young Spa & Wellness Centre Inc. (Applicant) v. Amy Wright, and, Director of Employment Standards (Respondents); Forever Young Spa & Wellness Centre Inc. (Applicant) v. Audrey Oliver and Director of Employment Standards (Respondents) *(Terminated)*

2096-06-ES: Awtar Singh Sarai (Applicant) v. Patrolman Security Services Inc., Director of Employment Standards (Respondents) *(Dismissed)*

2122-06-ES: Darren Dinner (Applicant) v. Triple M. Metals and Director of Employment Standards (Respondents) *(Terminated)*

2202-06-ES: Ruth I. Neely (Applicant) v. Perth Precision Machining & Manufacturing and Director of Employment Standards (Respondents) *(Withdrawn)*

2286-06-ES: Mark J. Trembley (Applicant) v. Waltec Forgings, Incorporated and Waltec Engineering, Incorporated and Director of Employment Standards (Respondents) *(Dismissed)*

2316-06-ES: Frank Decristoforo (Applicant) v. Braebury Homes Corporation and Director of Employment Standards (Respondents) *(Withdrawn)*

2541-06-ES: Esmeralda Lucia Chiriboga De Los Reyes (Applicant) v. Embassy of Ecuador and Director of Employment Standards (Respondents) *(Dismissed)*

2566-06-ES: Terry W. Leonard (Applicant) v. Canadian Corps of Commissionaires and Director of Employment Standards (Respondents) *(Dismissed)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

1963-05-HS: Derrick Stairs (Applicant) v. Coca-Cola Bottling Ltd. and, Cynthia Paquette, Inspector (Respondents) *(Withdrawn)*

2726-05-HS; 2728-05-HS: Hamilton Builders Supply Inc. (Applicant) v. Zeljko Ilincic, Inspector (Respondent); Hamilton Builders Supply Inc. (Applicant) v. John Zwaagstra and Zeljko Ilincic, Inspector (Respondents) *(Withdrawn)*

1238-06-HS: Geoff Barnard Sole Proprietor (Wood De Ville) (Applicant) v. Michael Brown, Inspector (Respondent) *(Withdrawn)*

1825-06-HS: Ambassador Golf Club Inc. (Applicant) v. Terry Waraich, Inspector (Respondent) *(Withdrawn)*

1836-06-HS: John Harness (Applicant) v. Toronto Transit Commission and Adrian David, Inspector (Respondents) *(Withdrawn)*

2162-06-HS: Viking Fire Protection Inc. (Applicant) v. Trevor Gaudet, Gord Baxter, Inspector (Respondents) *(Withdrawn)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

4039-05-U: Marcia Williams (Applicant) v. CUPE Local 005 (Respondent) v. Providence Healthcare (Intervenor) *(Dismissed)*

4297-05-ES: 2740036 Canada Inc. (Applicant) v. William Murrell and Director of Employment Standards (Respondents) *(Dismissed)*

0141-06-R; 0322-06-U: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. R.M. Belanger Limited (Respondent) v. Labourers' International Union of North America, Local 493 (Intervenor); Labourers' International Union of North America, Local 493 (Applicant) v. R.M. Belanger Limited (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local 2486 (Intervenor) *(Dismissed)*

0311-06-G: International Union of Elevator Constructors, Local 96 (Applicant) v. Thyssenkrupp Elevator (Canada) Limited (Respondent) *(Dismissed)*

0746-06-ES: Igor Semerenko o/a Atlantis Studio (Applicant) v. Veniamin Kamanskikh and Director of Employment Standards (Respondents) *(Dismissed)*

1131-06-U: Firoz Ramji (Applicant) v. UNITE HERE Local 75 (Respondent) *(Dismissed)*

1413-06-ES: 1135196 Ontario Inc. o/a Howard's Pawn Shop (Applicant) v. Jason Lavigne and Director of Employment Standards (Respondents) *(Dismissed)*

1792-06-ES: Dragan Sucic (Applicant) v. GN Packaging Equipment and Director of Employment Standards (Respondents) *(Dismissed)*

2011-06-R: International Brotherhood of Electrical Workers, Local 1739 (Applicant) v. 894907 Ontario Ltd. o/a Simcoe York Electric (Respondent) *(Granted)*

2133-06-ES: Jean Stewart (Applicant) v. The Auxiliary to the Cornwall Community Hospital and Director of Employment Standards (Respondents) *(Dismissed)*

Ontario Labour Relations Board,
505 University Avenue,
Toronto, Ontario
M5G 2P1

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